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July 15, 2009

The Honorable Anne Quinlan, Acting Secretary
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423-0001

Re: Allegheny Valley Railroad Company – Petition for Declaratory Order
STB Finance Docket No. 35239

Dear Acting Secretary Quinlan:

Enclosed for filing is an original and ten copies of the Allegheny Valley Railroad Company's Reply to the Buncher Company's Motion for Leave to File a Response to Allegheny Valley Railroad Company's Rebuttal. Please time and date stamp the extra copy of this letter and return it to us in the enclosed self addressed, stamped envelope provided for that purpose.

If you have any further questions in this regard, please contact the undersigned.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.

Attorney for Allegheny Valley Railroad Company

RRW/bab
Enclosure

xc: Allegheny Valley Railroad Company
All Parties of Record

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Office of Proceedings

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Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER



ALLEGHENY VALLEY RAILROAD COMPANY'S REPLY
TO THE BUNCHER COMPANY'S MOTION FOR LEAVE TO FILE A RESPONSE
TO ALLEGHENY VALLEY RAILROAD COMPANY'S REBUTTAL

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TO THE BUNCHER COMPANY'S MOTION FOR LEAVE TO FILE RESPONSE TO
ALLEGHENY VALLEY RAILROAD COMPANY'S REBUTTAL

Pursuant to 49 C.F.R. §1104.13(a), Allegheny Valley Railroad Company ("AVRR") files this Reply to The Buncher Company's ("Buncher") Motion for Leave to File a Response ("Surrebuttal") to AVRR's Rebuttal Statement of June 11, 2009. In its Motion, Buncher asserts that its surrebuttal to AVRR's rebuttal is justified because AVRR raised "entirely new factual claims and legal arguments." However, the record in this proceeding does not support Buncher's mischaracterization of AVRR's rebuttal, and Buncher's surrebuttal is nothing more than a reply to a reply prohibited by 49 C.F.R. §1104.13(c).

Contrary to Buncher's assertion, AVRR's Rebuttal does not raise new factual claims and legal arguments; it responds, as proper rebuttal, to Buncher's mischaracterizations of the scope of the 1984 Conrail abandonment authorization in AB-167 (Sub No. 588N). It was Buncher that raised these issues by misconstruing the scope of Conrail's 1984 abandonment in its Reply to which AVRR properly responded in its Rebuttal. All of the evidence and arguments asserted by Buncher in its surrebuttal statement, even if relevant, could and should have been presented in its reply statement of June 2, 2009.

Moreover, if the Buncher witness had been familiar with railroad track charts he would have recognized from Exhibit I of the AVRR Petition for Declaratory Order that the Allegheny Branch of the Conemaugh Division (a predecessor designation of the Valley Industrial Track) was not a single railroad track but included all the trackage as depicted in the Pennsylvania Railroad 1957 track chart between M.P. 0.0 and M.P. 4.38. That track chart clearly depicts two principle lines of trackage on either side of the Pittsburgh Produce Terminal Warehouse, one extending along Smallman Street and one extending along Railroad Street through the Produce Yard to rejoin the Smallman Street line at 11th Street and then onto the lower deck of the Ft. Wayne Bridge. This dual trackage configuration is confirmed by nine separate maps of the Pittsburgh Strip District from 1885 to 1984 attached as Exhibit AA of Mr. Peterson's Reply Verified Statement as well as Exhibit A of Buncher's Surrebuttal of June 25, 2009¹.

Accordingly, Buncher can claim no surprise at the facts and arguments presented in AVRR's Rebuttal Statement because these facts were presented in AVRR's Petition for Declaratory Order in Mr. Peterson's descriptions of the remaining trackage on either side of the Pittsburgh Produce Terminal Warehouse in 1984. See AVRR Petition for Declaratory Order Exhibit F1 and Peterson Verified Statement at p.6 re: 1984 Conrail abandonment. See also Exhibit H – Conrail 1993 ZTS Map, Track 217 (Smallman Street Lead Track).

Under 49 C.F.R. 1104.13(c) replies to replies are not permitted. Buncher, as a major commercial and industrial real estate developer in the Strip District and throughout Western Pennsylvania², was aware or should have been aware of the dual trackage

¹ Five of the maps in Mr. Peterson's exhibit are available for public online inspection at the University of Pittsburgh's Digital Research Library

² *The Buncher Company* also owns and leases various types of business equipment, specializing in tank, box, gondola, hopper and custom-built freight cars to railroads and industrial customers, offering lease

configuration for the Valley Industrial Track between 16th and 21st Street (as depicted on Buncher Surrebuttal Exhibit A). Buncher had the opportunity in its Reply to address and clarify those issues but it failed to do so. Instead it has attempted to foist on the Board a self-serving interpretation of Conrail's abandonment application in AB 167 (Sub No. 558N) in an effort to avoid the Board's jurisdiction. Therefore, Buncher's Motion to file further Surrebuttal testimony should be denied. Cf. City of Lincoln – Petition for Declaratory Order, F.D. 34425 (August 12, 2004).

AVRR is aware, however, that the Board may exercise discretion to accept supplemental pleadings in a proceeding in the interest of a complete record. While AVRR does not believe this is such a proceeding, if the Board grants Buncher's Motion, AVRR respectfully requests that the Board also accept and consider AVRR's response thereto so as not to prejudice AVRR. SMS Rail Services – Petition for Declaratory Order, F.D. 34483 (January 29, 2005).

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 

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Company

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arrangements that are tailored to meet the financial and operational objectives of its customers. Bucher Rail Car Services (BRCS) also renovates, repairs, rebuilds, maintains and upgrades special-service rolling stock for railroads, private owners and leasing companies.

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239
ALLEGHENY VALLEY RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF RUSSELL A. PETERSON IN
REPLY TO THE MOTION FOR LEAVE TO FILE OF THE BUNCHER COMPANY

My name is Russell A. Peterson and I am Chief Executive Officer of Allegheny Valley Railroad Company, ("AVRR") 519 Cedar Way, Bldg. 1, Ste. 100, Oakmont, PA 15139. This is my Reply Verified Statement to the Motion for Leave to File Surrebuttal of the Buncher Company ("Buncher") submitted in response to AVRR's Rebuttal.

I have served as Vice President, President, or CEO of AVRR since its acquisition from Conrail in 1995 and as owner and President or CEO of AVRR's parent Carload Express, Inc. since its incorporation in 1992. I am in my 39th year of railroad employment and have risen through the ranks of operating departments to Vice President Operations, engineering departments to Chief Engineer and mechanical departments to Senior Mechanical Engineer Locomotives. My degree is in engineering.

In its Response to AVRR's Rebuttal, Buncher claims AVRR changed course and now contends, without independent corroboration, that Conrail operated over two separate, parallel "lines of railroad" in the area bounded by 16th and 21st Streets in the Strip District. However AVRR's need to address this issue of two separate lines operated by Conrail in the Strip District arises solely from Buncher's erroneous assertion that

Conrail filed for abandonment authority for both lines of the Valley Industrial Track in 1984.

The exhibits attached to this Verified Statement prove that Conrail and its predecessor railroads operated from 1900 to 1984 over two separate lines of railroad in the area bounded by 16th and 21st Streets in the Strip District and that the 1984 Conrail application for abandonment did not pertain to the ex-AV Allegheny Branch (i.e. the Railroad Street line). (See AVRR Exhibits AA1 – AA9.) To clarify any confusion that may have been created by the Buncher Reply, I will address each of the pertinent rail lines which served the Strip District.

THE ALLEGHENY BRANCH ("RAILROAD STREET LINE")

The *original* Allegheny Valley Railroad Company ("AV") began construction at the Pittsburgh end (MP 0.0) on March 17, 1853 and by January 1856 the line was completed to Kittanning, PA. The AV terminal was located at the intersection of 11th and Smallman Streets (MP 0.0).¹ The line went north along Smallman Street for several blocks and then crossed over at 16th Street to follow Railroad Street to and across 21st Street, continuing along Railroad Street to 31st Street, and then to points north (AVRR Exhibit AA 1-3). This AV route is identified on Valuation Plan VS 23.1 S.L.1 (Survey Land), which was furnished by Conrail to AVRR at the time of acquisition, as the "Original Centerline Conemaugh Division", attached herewith as AVRR Exhibit BB.

The AV line was leased by PRR in 1900 becoming part of a through Pittsburgh-Buffalo route (AVRR Exhibit AA-4). On April 1, 1907, the AV became part of the newly formed PRR Conemaugh Division. In 1910 the AV was consolidated into PRR

¹ Triumph VIII Pittsburgh 1749-2006, by Charles S. Roberts, Barnard, Roberts and Co., Inc., October 2006, Page 182.

and ceased to exist as a separate company.² The ex-AV Allegheny Branch (Railroad Street line) is the first of two separate lines operated by Conrail in the area bounded by 16th and 21st Streets in the Strip District.

After the Penn Central bankruptcy of 1970, Pittsburgh Produce Terminal property south of 16th Street (as well as the property west of the then future permanent rail easement between 16th and 21st Streets) was retained by the Penn Central Trustees and not transferred to Conrail under the 1975 USRA Final System Plan. This is corroborated by Conrail's notation on VS 23.1 S.T.1 (Survey Track), which was furnished by Conrail to AVRR at the time of acquisition, attached herewith as AVRR Exhibit CC and Buncher's Surrebuttal Exhibit A. The south end of the ex-AV Allegheny Branch was thereby and thereafter truncated at the north side of 16th Street (MP 0.3) and no longer provided a through route to the Fort Wayne Connecting Track.

THE FORT WAYNE CONNECTING TRACK

On September 22, 1857 the Pittsburgh, Ft. Wayne & Chicago RR (formerly the Ohio & Pennsylvania RR) and the Cleveland & Pittsburgh RR (via trackage rights over the PFTW&C) reached Pittsburgh via a new bridge over the Allegheny River that connected with the AV at Milepost 0.0 (AVRR Exhibit AA-1). The C&P provided a through rail line for Great Lakes traffic, especially iron ore, into the burgeoning heavy industrial base in the greater Pittsburgh area.³

In 1899 PRR established a freight house at 16th Street and a produce facility at 21st Street, with yards accessed by the AV line along Railroad Street (AVRR Exhibit AA-

² Triumph VIII Pittsburgh 1749-2006, by Charles S. Roberts, Barnard, Roberts and Co., Inc., October 2006, Page 182.

³ Triumph VIII Pittsburgh 1749-2006, by Charles S. Roberts, Barnard, Roberts and Co., Inc., October 2006, Page 199.

4, plate 14). Additionally in 1899, PRR completed a single-track line from Milepost 0.0 at 11th Street (end of the Fort Wayne Line) along Smallman Street to 28th Street and then over to the AV Line (Allegheny Branch) at 29th Street⁴ (AVRR Exhibit AA-4 and 5). This PRR line ("Smallman Street line") is the second of two separate lines operated by Conrail in the area bounded by 16th and 21st Streets in the Strip District. This route is identified on Valuation Plan VS 23.1 S.L.1 of Exhibit BB as the "Present Centerline Conemaugh Division".

In 1902 a new bridge was constructed over the Allegheny River. The new "Fort Wayne Bridge" was erected as a double-deck bridge. All through trains between the Fort Wayne Line and the PRR Pittsburgh Division (which was opened for service from Philadelphia December 10, 1852 and was located several blocks east of the Smallman Street line adjacent to the east side of Liberty Avenue) were carried on the upper deck and Pittsburgh local freights and connections with the AV were carried on the lower deck.⁵ The line carried on the lower deck was designated the Fort Wayne Connecting Track.

After the Penn Central bankruptcy in 1970 and the retention of Pittsburgh Produce Terminal property south of 16th Street by the Penn Central Trustees, the south end of the Allegheny Branch (Railroad Street line) was truncated at 16th Street. Throughout the remainder of the 1970s and early 1980s, the Smallman Street line was the *only* route in service to the Fort Wayne Connecting Track at MP 0.0 and the lower deck of the Fort Wayne Bridge.

⁴ Triumph VIII Pittsburgh 1749-2006, by Charles S. Roberts, Barnard, Roberts and Co., Inc., October 2006, Page 184.

⁵ Triumph VIII Pittsburgh 1749-2006, by Charles S. Roberts, Barnard, Roberts and Co., Inc., October 2006, Page 207.

1984 CONRAIL APPLICATION FOR ABANDONMENT

In its Reply to AVRR's Petition, Buncher introduced Conrail's Application for Abandonment of the Fort Wayne Connecting Track and the Valley Industrial Track as Buncher's Exhibit F. EXHIBIT B LOCATION AND MAP to the Conrail abandonment application provides independent corroboration that the portion of the Valley Industrial Track (formerly Allegheny Secondary) proposed for abandonment is clearly the 1899 PRR Smallman Street line, the then "Present Centerline Conemaugh Division" and not the Allegheny Branch (Railroad Street line).

Looking at Conrail's Exhibit B, I see "CR MAINLINE PHILADELPHIA", which is clearly the Pittsburgh Division mainline to Philadelphia. Connecting to the CR MAINLINE in a parallelogram is the Fort Wayne Line mainline ("CONEMAUGH M.L.") on the upper deck of the Fort Wayne Bridge, which connected with the CR MAINLINE PHILADELPHIA at Pitt Interlocking (the bottom leg of the parallelogram marked as "Pitt") and at East Pitt Interlocking (the top leg of the parallelogram) and which is correctly illustrated.

Looking at Conrail's Exhibit B, I see "Fort Wayne Connecting Track" (located on the lower deck of the Fort Wayne Bridge) in hatch-marks and the Valley Industrial Track between Milepost 0.0⁶ and 0.66 in hatch-marks. At the time of Conrail's 1984 application for abandonment, the Fort Wayne Connecting Track at its MP 0.0-end connected *only* with the 1899 PRR Smallman Street line identified as the Allegheny Secondary. Two

⁶ Historically significant, Milepost 0.0 marked juncture of several PRR trunk lines. It marked the east end of the Pittsburgh, Ft. Wayne & Chicago RR, the east end of the Cleveland and Pittsburgh RR, the west end of the Allegheny Valley RR, the west end of the PRR Conemaugh Division via Smallman Street, and the west end of the PRR Pittsburgh Division from Philadelphia. Both the west end of the Allegheny Valley RR and the west end of the PRR Conemaugh Division via Smallman Street crossed both 16th and 21st Streets and ended at M.P. 0.0 thereby using the same mile post markers in the Strip District.

streets existed between the "CR MAINLINE PHILADELPHIA" and the former Allegheny Secondary that ran along Smallman Street. These streets are Liberty Avenue and Penn Avenue. Looking at Conrail's Exhibit B, I see Liberty Avenue and Penn Avenue clearly labeled and the Allegheny Secondary clearly depicted in the location of Smallman Street, which is the next street to the west of Penn Avenue.

At the time of Conrail's 1984 application for abandonment, the Fort Wayne Connecting Track and the 1899 PRR Smallman Street line (which comprised a portion of the Valley Industrial Track) provided an overhead route to the ex-AV Allegheny Branch at 29th Street used to deliver cars to 43rd Street Yard on the Allegheny Branch. Looking at Conrail's abandonment application Exhibit C on the next page, I see "Former Overhead Route. No originating or terminating traffic during last 12 months." This would *not* describe the Allegheny Branch (Railroad Street line) in 1984.

In 1984, the ex-AV Allegheny Branch had numerous industries originating or terminating traffic, including receivers in the Pittsburgh Produce Terminal, which was accessed at this time *only* over the ex-AV Allegheny Branch (Railroad Street line) below 29th Street and which was typically served out of 43rd Street Yard. (See Verified Statement of James E. Streett.)

Returning to Conrail's Exhibit B, I see two lines between the 1899 PRR Smallman Street line and the east bank of the Allegheny River (the blob in the middle of the river is Herrs Island). These are the ex-AV Allegheny Branch (Railroad Street line) and the B&O River Branch, both of which were originating and/or terminating traffic in 1984 and neither of which were delineated by Conrail for abandonment by hatch-marked tape.⁷

⁷ In preparing this statement, I discovered that on AVRR's Rebuttal Exhibit D, the B&O River Branch was incorrectly highlighted in yellow. The line between the B&O River Branch and the Smallman Street line

Thus all rail lines in the Strip District are identified on Conrail's Exhibit B and it is obvious that the ex-AV Allegheny Branch, including the retained permanent rail easement, was *not* proposed for abandonment by Conrail in AB 167 (Sub No. 588N).

VALLEY INDUSTRIAL TRACK

Conrail used the term "Valley Industrial Track" to refer to numerous lines of railroad generally located on the east side of the Allegheny River. In AVRR's Exhibit B1, the 1995 Deed to Allegheny Valley Railroad Company, Deed Book page 211 shows that the Allegheny Branch from MP 0.3 to MP 4.7 was also known as the Valley Industrial Track. Deed Book page 216 shows the Brilliant Branch was also known as the Valley Industrial Track. The Brilliant Branch was constructed by the PRR in 1904 from the Pittsburgh Division main at East Liberty to a wye connection with the West Penn Division on the west side of the Allegheny River at Aspinwall for the purpose of rerouting freight traffic around the congested Pittsburgh area⁸ (AVRR Exhibit AA-6). Deed Book page 219 shows the Allegheny Branch Connection, which joined the overhead Brilliant Branch with the under-grade Allegheny Branch, also known as the Valley Industrial Track. In Buncher's Exhibit F, Conrail's EXHIBIT B LOCATION AND MAP shows the former Allegheny Secondary between MP 0.00 and MP 0.66 was also known as the Valley Industrial Track. This line of railroad was constructed by the PRR in 1899 and in 1984 was Conrail's only line in the Strip District connecting to the lower deck of the Fort Wayne Bridge.

with the hatch-marked tape is the Allegheny Branch (Railroad Street line) which should have been highlighted in yellow.

⁸ Triumph VIII Pittsburgh 1749-2006, by Charles S. Roberts, Barnard, Roberts and Co., Inc., October 2006, Page 63.

ALLEGHENY SECONDARY

Examination of the 1995 Deed to Allegheny Valley Railroad Company reveals no reference to the ex-AV Allegheny Branch (Railroad Street line) as being also or formerly referred to as the Allegheny Secondary. Buncher states that Conrail adopted the convention of referring to its line of railroad between 16th and 21st Streets as the Allegheny Secondary in the late 1970s. By the late 1970s, however, the *only* route from the Fort Wayne Connecting Track to the ex-AV Allegheny Branch was the ex-PRR route, which was identified in Conrail's Exhibit B as the former Allegheny Secondary. Moreover, the only route from the ex-AV Allegheny Branch (Railroad Street line) to the permanent rail easement between 16th and 21st Streets was the ex-AV Allegheny Branch between 29th Street and 21st Street along Railroad Street, a line of railroad that has been continuously active from 1856 to the present.

TOTALITY OF FACTS AND CIRCUMSTANCES

The totality of facts and circumstances prior and subsequent to the 1984 Conrail abandonment application for the Fort Wayne Connecting Track and the contiguous portion of the Valley Industrial Track do not confirm that Conrail intended to abandon its permanent rail easement but instead confirms Conrail's reservation of the permanent easement extending from the active Allegheny Branch from Railroad Street at 21st Street to the truncated end of the Allegheny Branch at 16th Street. A chronological summary of the pertinent facts follows:

In 1852, AV builds from 11th and Smallman Streets up Smallman Street to 16th Street and then over to and up Railroad Street to 29th Street and points north. This AV route is

identified as the Original Centerline Conemaugh Division on AVRR Exhibit BB and on AVRR Exhibit AA 1-3).

In 1899, PRR established a produce facility at 21st Street, with yards accessed by the AV line along Railroad Street. This is shown in Buncher's Exhibit A Plan of Produce Yard and 16th Street Freight Station (c.1923). The AV route between 11th Street and 21st Street was more or less the same as the original 1856 main line. (See also AVRR Exhibit AA-4).

In 1899, PRR completed a single-track line from 11th Street to 28th Street along Smallman Street and then over to the AV Line (Allegheny Branch) at 29th Street. This PRR route is identified as the Present Centerline Conemaugh Division on AVRR's Exhibit BB. This PRR route is also shown in Buncher's Surrebuttal Exhibit A running in Smallman Street. (See also AVRR Exhibit AA-4).

In 1900 PRR, leased the AV and in 1910 the AV was consolidated into PRR.

In 1929-30, PRR constructed a greatly expanded produce yard between 11th and 21st Streets (AVRR Exhibit AA-5, 6 and 7). The layout of the completed produce facility is shown in PRR Pittsburgh, PA Freight & Produce Terminal dated December 3, 1929, attached herewith as Exhibit DD, which is nearly identical to VS 23.1 S.T.1 of AVRR Exhibit CC. Note that the Allegheny Branch alignment from Railroad Street thereafter followed the "Running Track" through the Freight Storage Yards to 11th Street and the

lower deck of the Fort Wayne Bridge. Note also that the ex-PRR line from the lower deck of the Fort Wayne Bridge running along and then in Smallman Street is clearly shown.

In 1929-30, PRR also expanded its auxiliary support yard on the Allegheny Branch between 43rd and 48th Street to hold 586 cars, known as 43rd Street Yard⁹ (AVRR Exhibit AA-8).

In June 1970, Penn Central Transportation Company ("PCTC") filed for bankruptcy. As a result, certain property did not get transferred to Conrail as follows:

(i) The Penn Central Trustees subsequently retained all of the real estate under the Team Yard for Produce Yard "A" and the adjacent Freight Storage Yard, which thereby truncated the Allegheny Branch "Running Track" at the north side of 16th Street. The line of demarcation between Conrail and Trustees was clearly noted by Conrail on VS 23.1 S.L.1 and S.T.1, AVRR Exhibits BB and CC respectively.

(ii) The Penn Central Trustees subsequently retained all of the real estate under the Produce Yard "B", Storage Yard for Produce Yard "C", and the adjacent Freight Storage Yard, as delineated on Conrail-furnished VS 23.1 S.T.1 by "TRUSTEES PCL.". This eliminated the "Running Track" altogether and reduced the real estate remaining between 16th and 21st Streets to only those parcels of real estate that would years later be sold to Buncher subject to the permanent rail easement (delineated on Conrail-furnished

⁹ Triumph VIII Pittsburgh 1749-2006, by Charles S. Roberts, Barnard, Roberts and Co., Inc., October 2006, Pages 127 and 184.

VS 23.1 S.T.1 by "P.E. RESERVED") and the Urban Redevelopment Authority (which included the Fruit Auction & Sales Building).

In 1976, the Penn Central Trustees conveyed to Conrail the Fort Wayne Connecting Track to 11th Street, the ex-PRR line from 11th Street to the ex-AV Allegheny Branch at 29th Street, and the ex-AV Allegheny Branch between 57th Street and 16th Street via Railroad Street. (The USRA apparently referred to the ex-PRR line between 11th and 29th Streets and the ex-AV line between 16th and 57th Streets as "Pittsburgh 11th Street to Pittsburgh 57th Street"). Without the "Running Track" between 21st and 11th Streets that had been retained by the Trustees, Conrail designated Track No 8 between 16th and 21st Streets to be the surviving Valley Industrial Track extension of the truncated Allegheny Branch along Railroad Street.

In 1983, Conrail prepared to abandon the Fort Wayne Connecting Track that was carried on the lower deck of the Fort Wayne Bridge and the contiguous ex-PRR "Overhead Route" to the ex-AV Allegheny Branch at 29th Street. Conrail reactivated the Brilliant Branch and the Allegheny Branch Connection between the Pittsburgh Division at East Liberty and the Allegheny Branch at Coleman (MP 6.8). In February 1983, Conrail renewed the cross-ties, surfaced the ballast and replaced the rail with 131-pound welded rail as independently corroborated in Track Charts furnished to AVRRA by Conrail, attached herewith as Exhibit EE. The new service route was via the upper deck of the Fort Wayne Bridge, the Pittsburgh Division between the Fort Wayne Bridge and the

Brilliant Branch, the Brilliant Branch and Allegheny Branch Connection to Coleman, and the Allegheny Branch from Coleman to 16th Street.

In 1983, Conrail sold the Fruit Auction & Sales Building and surrounding parcel of land to the Urban Redevelopment Authority. The ex-PRR Smallman Street line traversed the perimeter of this parcel. (North of 21st Street the ex-PRR line was not on railroad land but in the City of Pittsburgh Smallman Street public right-of-way.)

In July 1983, Conrail sold the remaining balance of the land south of 21st Street to Buncher; however, it reserved therefrom the permanent rail easement between 21st and 16th Streets, which extended from the ex-AV Allegheny Branch at Railroad Street.

In 1984, Conrail filed application for approval of abandonment, and in a decision served May 18, 1984, received ICC certificate authority to abandon as follows:

"1.46 miles of rail line of the Fort Wayne Connecting Track (including the lower level of the Fort Wayne Bridge) from a point in Pittsburgh on the east side of Sandusky Street where Conrail's line connects with the Conemaugh Main Line (approximately milepost 0.8) to its junction with the Valley Industrial Track (approximately MP 0.0) and the Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (approximately MP 0.0) to the north side of 21st Street (approximately MP 0.66) in Allegheny County, PA."

This is unmistakably the ex-PRR line along Smallman Street as indicated on AVRR Exhibit AA-9, which is a 1984 Conrail track chart indicating the presence of Conrail track in Smallman Street from mile 0.17 to 1.13 (just before 28th Street) in the Strip District. The ex-AV Allegheny Branch had lost its connection with the Fort Wayne Connecting Track some eight (8) years earlier when the Penn Central Trustees and USRA caused the ex-AV Allegheny Branch to be truncated at 16th Street (MP 0.3).

After May 18, 1984, all service to the Pittsburgh Produce Terminal was via the ex-AV Allegheny Branch from Coleman to 21st Street, and if necessary, by the permanent rail easement reserved only ten (10) months earlier, to 16th Street.

In October 1995, Conrail sold the ex-AV Allegheny Branch to the new AVRR, including the permanent rail easement between 16th Street (MP 0.3) and 21st Street (MP 0.6), as was memorialized in the Deed.

In October 1995, AVRR commenced operations using the upper deck of the Fort Wayne Bridge, the Pittsburgh Division to the Brilliant Branch and the ex-AV Allegheny Branch to the Strip District and Produce Terminal via Railroad Street. This portion of the Allegheny Branch line of railroad has been in continuous service since 1856, a period of 153 years.

In the totality of facts and circumstances, the 1984 abandonment of the Fort Wayne Connecting Track on the lower deck of the Fort Wayne Bridge was a big deal. The removal of the low-elevation approach to the lower deck of the Fort Wayne

Connecting Track on the north shore of the Allegheny River provided the necessary vertical clearance needed to begin construction in 1985 of the long-delayed missing segment of Interstate 279 (Parkway North) between the Fort Duquesne Bridge over the Allegheny River and the rest of Interstate 279. (See AVRR Exhibit FF). The abandonment also relieved the URA of the common carrier railroad line located on the periphery of its parcel, thereby freeing up public access along Smallman Street to the vendors located in the URA's Fruit Auction & Sales Building.

CLARIFICATIONS

In the Verified Statement of Joseph M. Jackovic in Response to the Rebuttal of Allegheny Valley Railroad Company, page 5, Buncher "suspects" that AVRR may be confusing the Valley Industrial Track along Smallman Street with the "Allegheny Valley Industrial Track" in Buncher's Exhibit G. Let there be no confusion. The "Allegheny Valley Industrial Track" to which Mr. Jackovic makes reference in Buncher's Exhibit G is none other than the "Running Track" identified in Totality of Facts and Circumstances above at 1929-30 and discussed in greater detail at 1970 (i) and (ii). This may be verified by simply comparing Buncher's Exhibit G with AVRR Exhibit DD.

Finally, I observe that Mr. Jackovic has refined his position first expressed on page 6 of his June 2, 2009 Verified Statement. He now states on page 1 of his June 23, 2009 Statement "the trackage on Buncher's property was removed, the entire area was filled, graded and prepared for non-railroad use and Buncher demarcated the boundaries of its property with jersey barriers, all *without objection* by Conrail." This assertion strongly suggests that it was not Conrail who removed Track 8 from the permanent rail

easement. In any event, Conrail had no need to object because only ten months earlier it had reserved the permanent rail easement over the Buncher parcel.

CONCLUSION

The permanent rail easement for the Allegheny Branch between 21st Street and 16th Street is part of a line of railroad that has been in continuous common carrier use from 1856 to the present, a period of 153 years. Only ten (10) months after Conrail preserved the permanent rail easement and reactivated the Brilliant Branch connection to the former Allegheny Branch (Railroad Street line), it applied for approval to abandon two nearby contiguous lines of railroad that formed a surplus "Former Overhead Route" to the Allegheny Branch (Railroad Street line). The Smallman Street line and the Fort Wayne Connecting Track had compelling justifications for abandonment that had no relation to the 1983 Buncher/Conrail transaction. Conrail clearly memorialized its intention to retain its permanent rail easement in its 1983 Deed to Buncher and its 1995 Deed to AVRR.

VERIFICATION

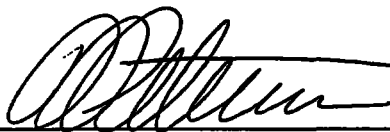
COMMONWEALTH OF PENNSYLVANIA)

)

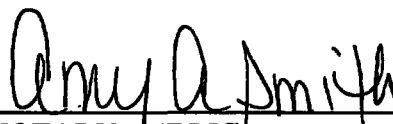
COUNTY OF ALLEGHENY)

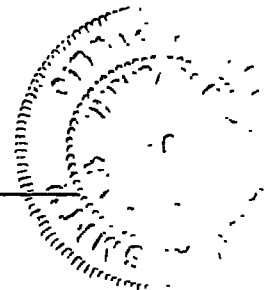
I, Russell A. Peterson, Chief Executive Officer, Allegheny Valley Railroad Company,
swear or affirm and verify that the statements made in the foregoing Verified Statement
are true and accurate to the best of my knowledge, information and belief.

July 7, 2009
DATE

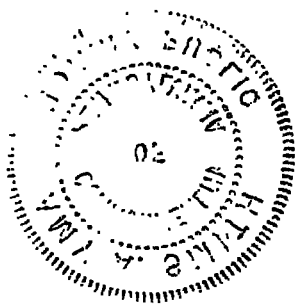

SIGNATURE

Subscribed and sworn to before me this 7th day of
July 2009.


NOTARY PUBLIC



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Amy A. Smith, Notary Public
Calmar Boro, Allegheny County
My Commission Expires April 15, 2011
Member, Pennsylvania Association of Notaries



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WASHINGTON, D.C.

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF RUSSELL A. PETERSON

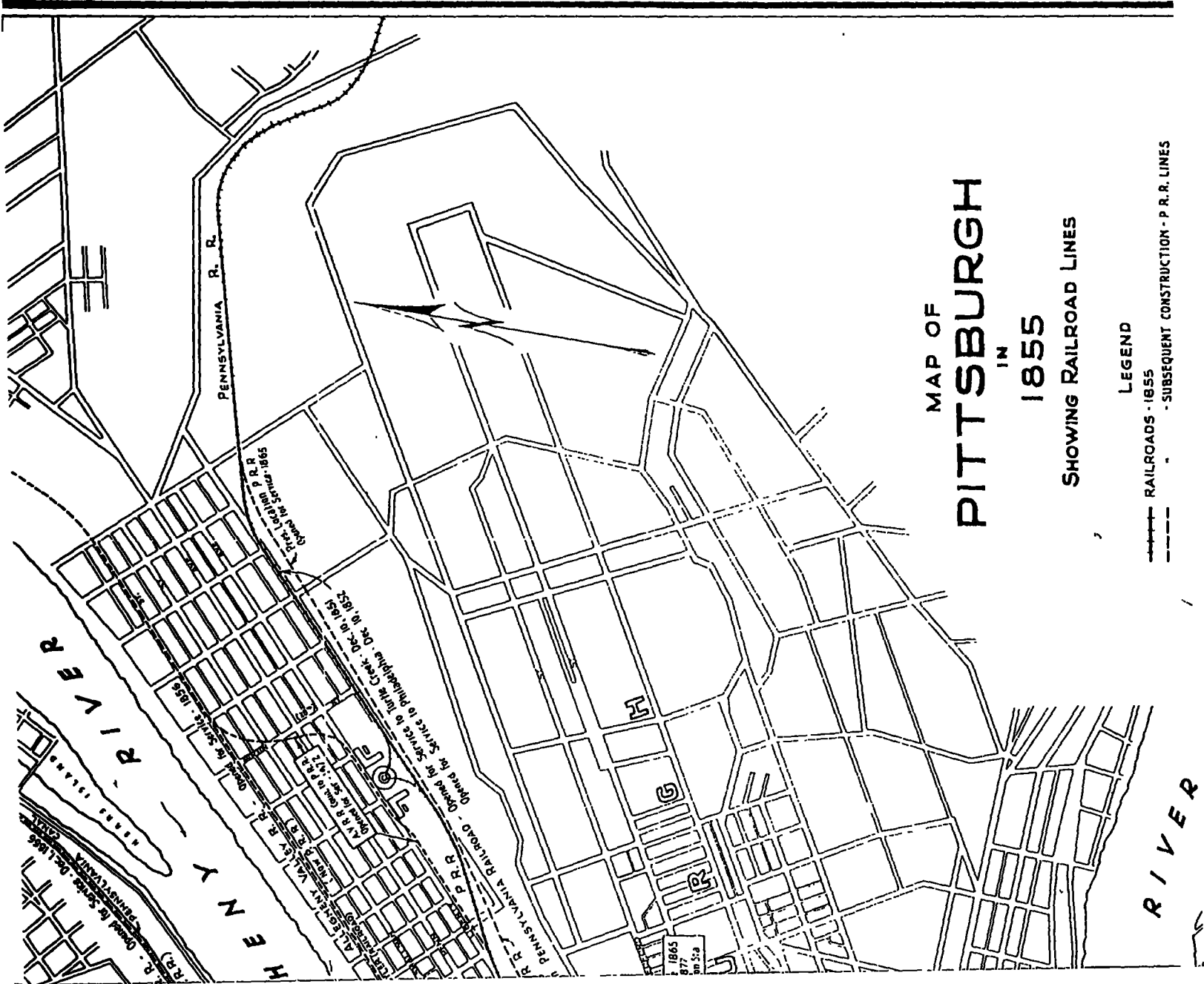
EXHIBITS AA - EE

Exhibit AA	Compendium of Railroad Maps and Track Charts for Pittsburgh Strip District 1855 to 1984
Exhibit BB	Conrail Valuation Plan VS 23.1, S.L. 1 (Survey Land)
Exhibit CC	Conrail Valuation Plan VS 23.1, S.T. 1 (Survey Track)
Exhibit DD	Pennsylvania Railroad, Pittsburgh, PA Freight and Produce Terminal, December 3, 1929
Exhibit EE	Conrail Track Chart, Valley Industrial Track, 1995
Exhibit FF	Photographs of Fort Wayne connecting track over Interstate 279

EXHIBIT AA

STRIP DISTRICT RAIL MAPS/CHARTS
1885-1984

1. Map of Pittsburgh in 1855 showing railroad lines
(Insert from Pennsylvania R.R. System, Central Region, Industrial Map of the Pittsburgh District, August 1924)
2. Diffenbacker Map of Pittsburgh and Allegheny Cities – 1885
3. Diffenbacker Map of Pittsburgh and Allegheny Cities – 1889
4. 1906 Volume 3, Central Pittsburgh Wards 6-12 and 15-17, Plates 13, 14, 15
5. 1923 Volume 1, Central Pittsburgh Wards 1-6 and 9, Plate 5b, 10a, 10b, 31a, 31b, 32a, 30a
6. 1924 Pennsylvania Railroad System – Central Region Industrial Map of the Pittsburgh District – August 1924
7. 1929 Volume 10, Central Pittsburgh Wards 1-3; Plates 26, 27, 29, 30
8. 1948 The Pennsylvania Railroad Company – Central Region, Pittsburgh, PA track layout between 11th Street and 51st Street, April 16, 1948
9. 1984 Conrail Track Chart – Central Region, Pittsburgh Division
(Valley Industrial Track)



MAP OF PITTSBURGH IN 1855

SHOWING RAILROAD LINES

LEGEND

- RAILROADS - 1855
- SUBSEQUENT CONSTRUCTION - P. R. R. LINES

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Title: Map of Pittsburgh and Allegheny cities

Date: 1885

Creator: Diffenbacher, J. F.

Description: Dimensions: 56 x 71 cm. Scale: 1:24,000.

Full title: Map of Pittsburgh and Allegheny cities, drawn from official maps and records. **Notes:** "Entered according to act of Congress in the year 1876 by Thurston & Diffenbacher in the Office of the Library of Congress at Washington"; Identifies streets, railroads, railroad stations, cemeteries, reservoirs, city and township lines, and regional areas.

Subjects: Pittsburgh (Pa.)--Maps.

Allegheny (Pa.)--Maps.

Allegheny County (Pa.)--Maps.

Thurston, George H. (George Henry), 1822-1895.

Format: Map

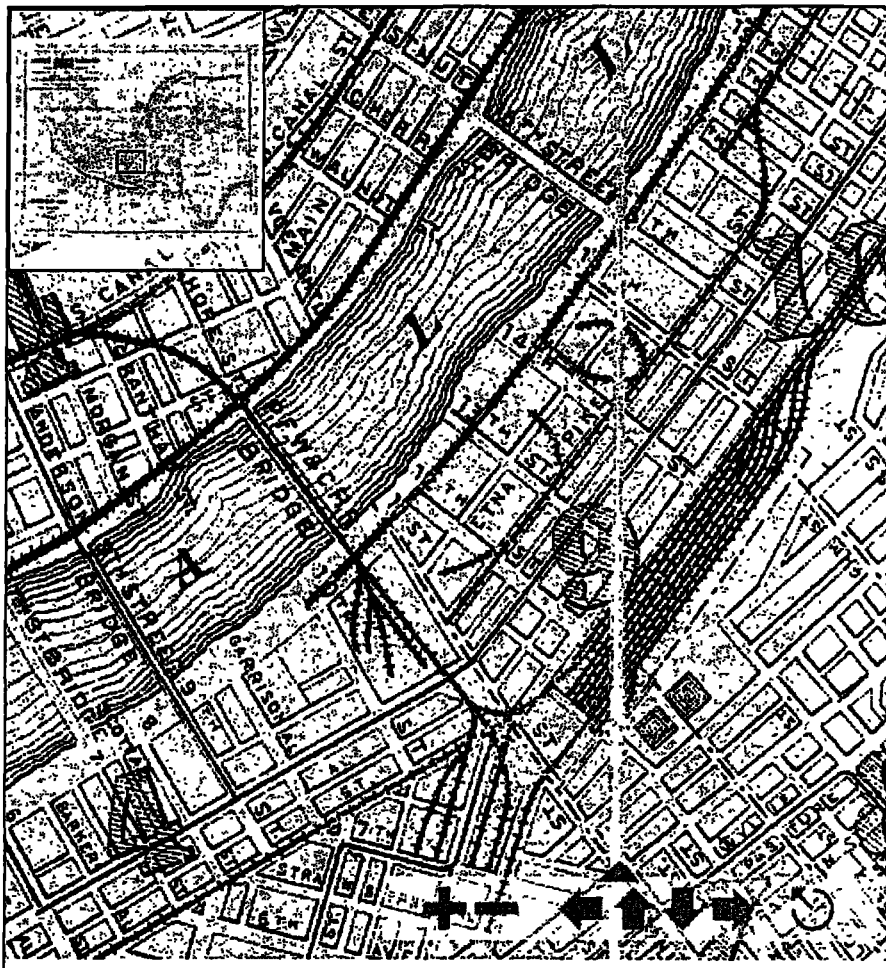
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Title: Map of Pittsburgh and Allegheny cities

Date: 1885

Creator: Diffenbacher, J. F.

Description: Dimensions: 56 x 71 cm. Scale: 1:24,000.

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Subjects: Pittsburgh (Pa.)—Maps.

Allegheny (Pa.)—Maps.

Allegheny County (Pa.)—Maps.

Thurston, George H. (George Henry), 1822-1895.

Format: Map

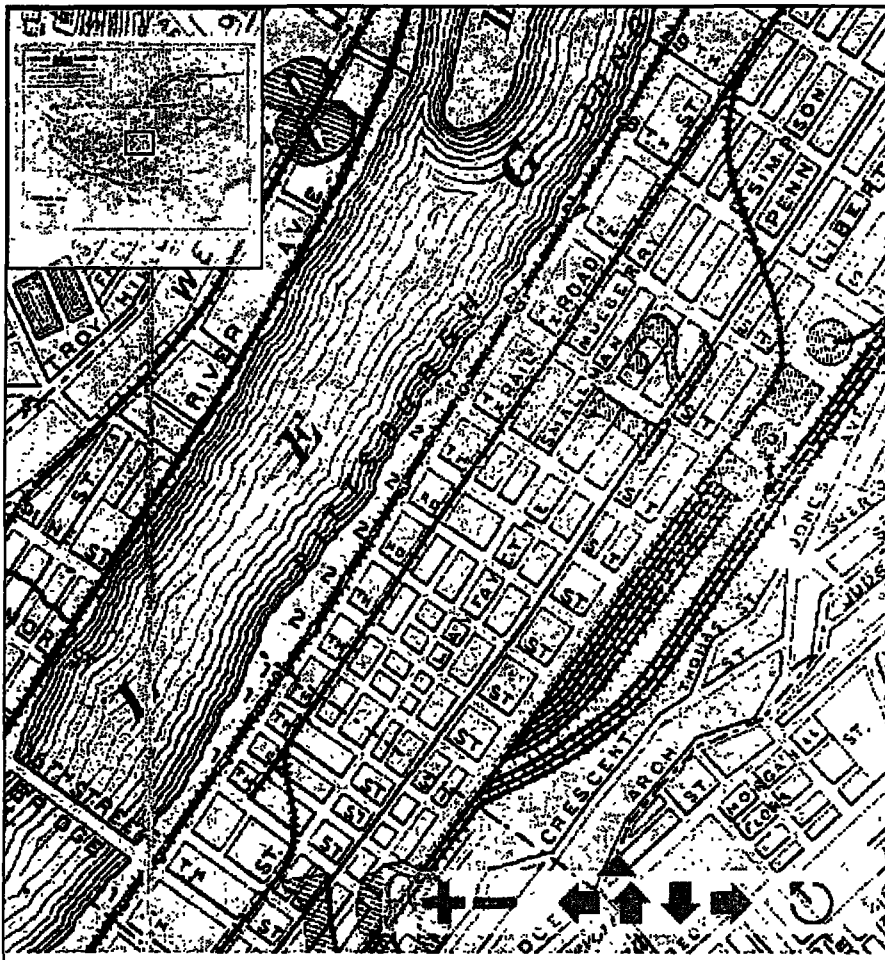
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Title: Map of Pittsburgh and Allegheny cities

Date: 1889

Creator: Diffenbacher, J. F.

Description: Dimensions: 56 x 71 cm. Scale: 1:24,000.

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Subjects: Pittsburgh (Pa.)—Maps.

Allegheny (Pa.)—Maps.

Allegheny County (Pa.)—Maps.

Format: Map

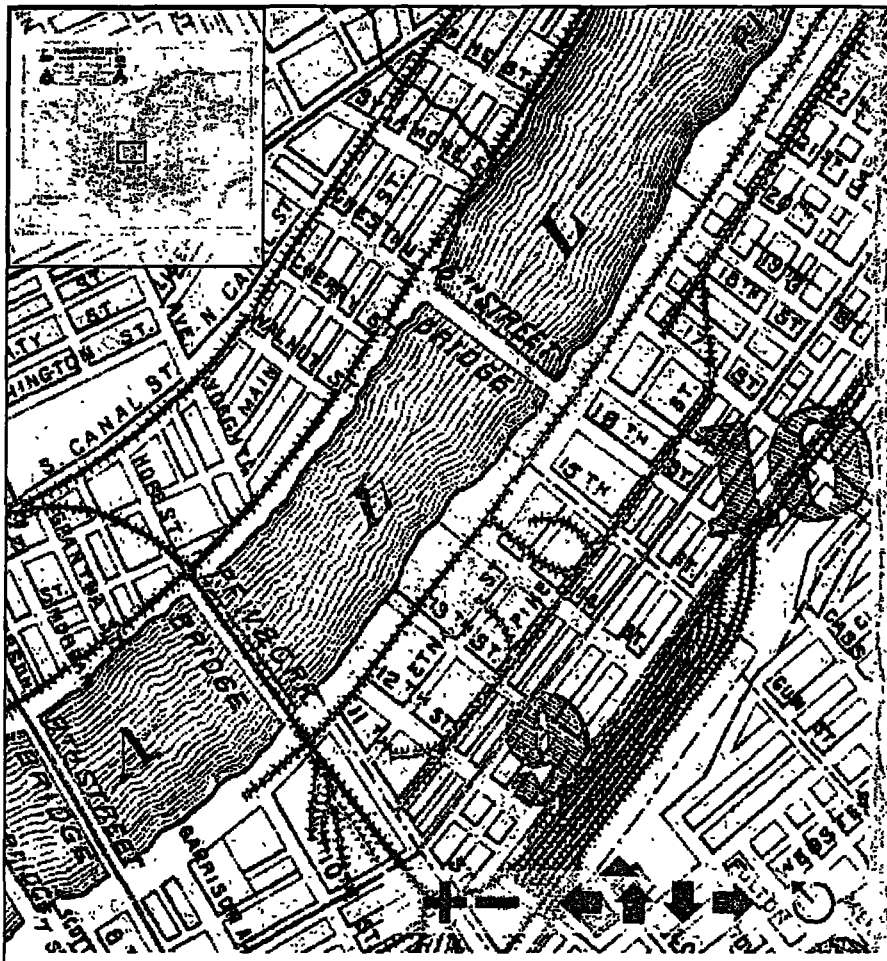
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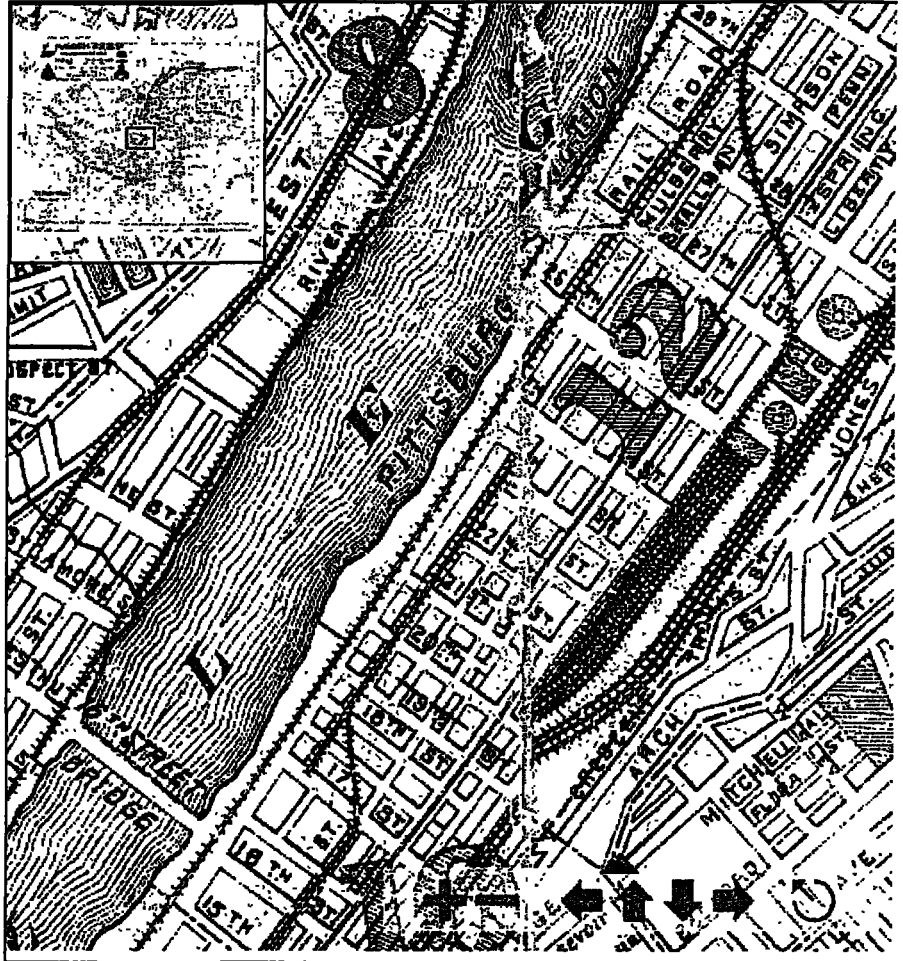


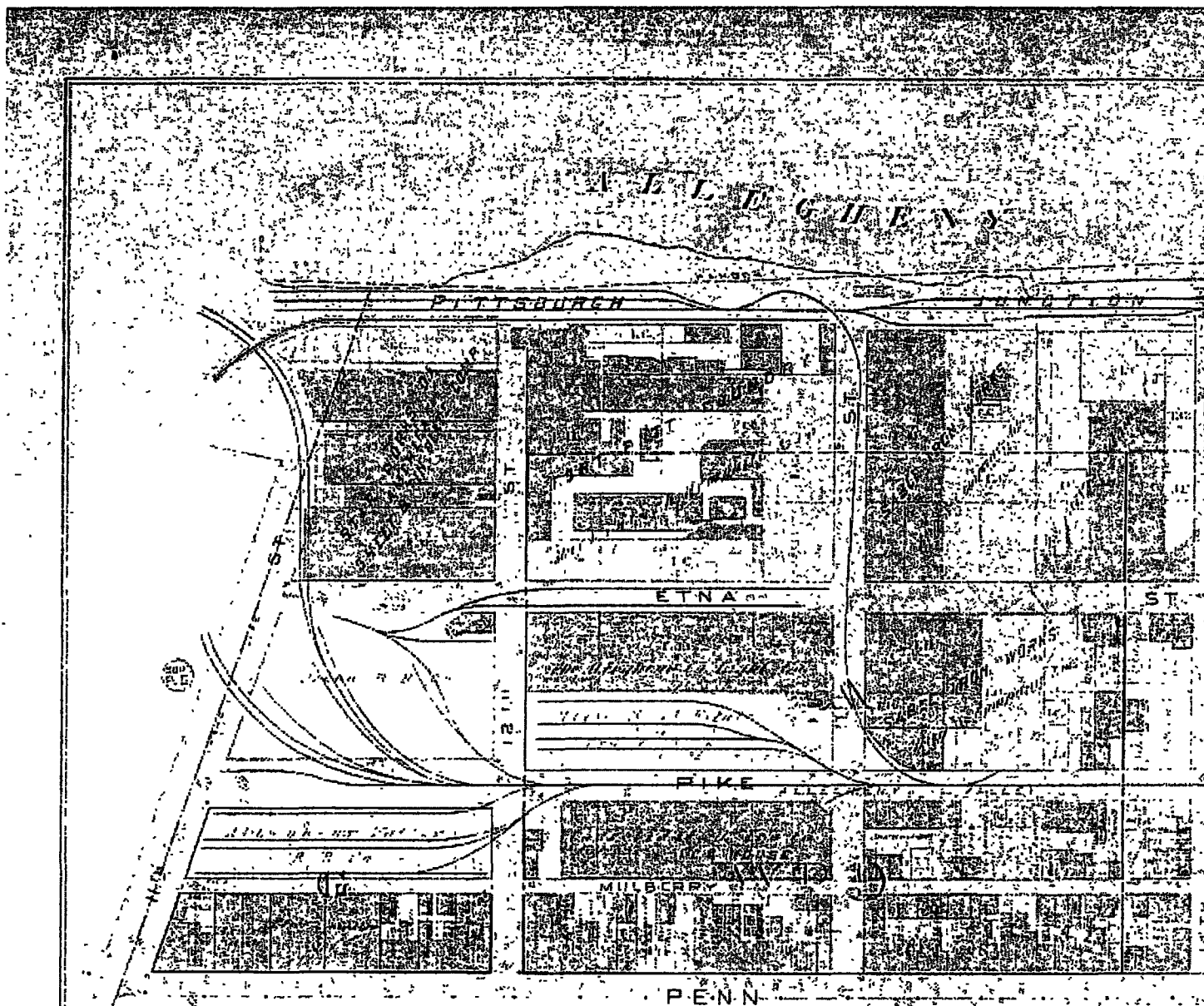
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[Return to search results](#) | [<< previous item](#) | [next item >>](#)*Tip: drag edges of image to resize***Title:** Map of Pittsburgh and Allegheny cities**Date:** 1889**Creator:** Dittenbacher, J. F.**Description:** Dimensions: 56 x 71 cm. Scale: 1:24,000.**Full title:** Map of Pittsburgh and Allegheny cities, drawn from official maps and records. **Notes:** "Entered according to act of Congress in the year 1866 by J. F. Dittenbacher in the Office of the Library of Congress at Washington"; Identifies streets, railroads, railroad stations, cemeteries, reservoirs, city and township lines, and regional areas.**Subjects:** Pittsburgh (Pa.)—Maps.

Allegheny (Pa.)—Maps.

Allegheny County (Pa.)—Maps.

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Buildings on Current Map

Civic Club
Thaw's Free Baths
St Philomena R C Church
St Philomena School
Sable Iron Works
Ralston 9th Ward Public School
Fort Pitt Foundry Co
Allegheny County Light Co
Consolidated Ice Co
Star Works of America Sheet & Tin Plate Co
16th Street Bridge
Congregation Ohel Jacob
Sable Iron Works (2)
Market House

Landmarks on Current Map

(None)

Historic Pittsburgh

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- ☒ 12% Zoom

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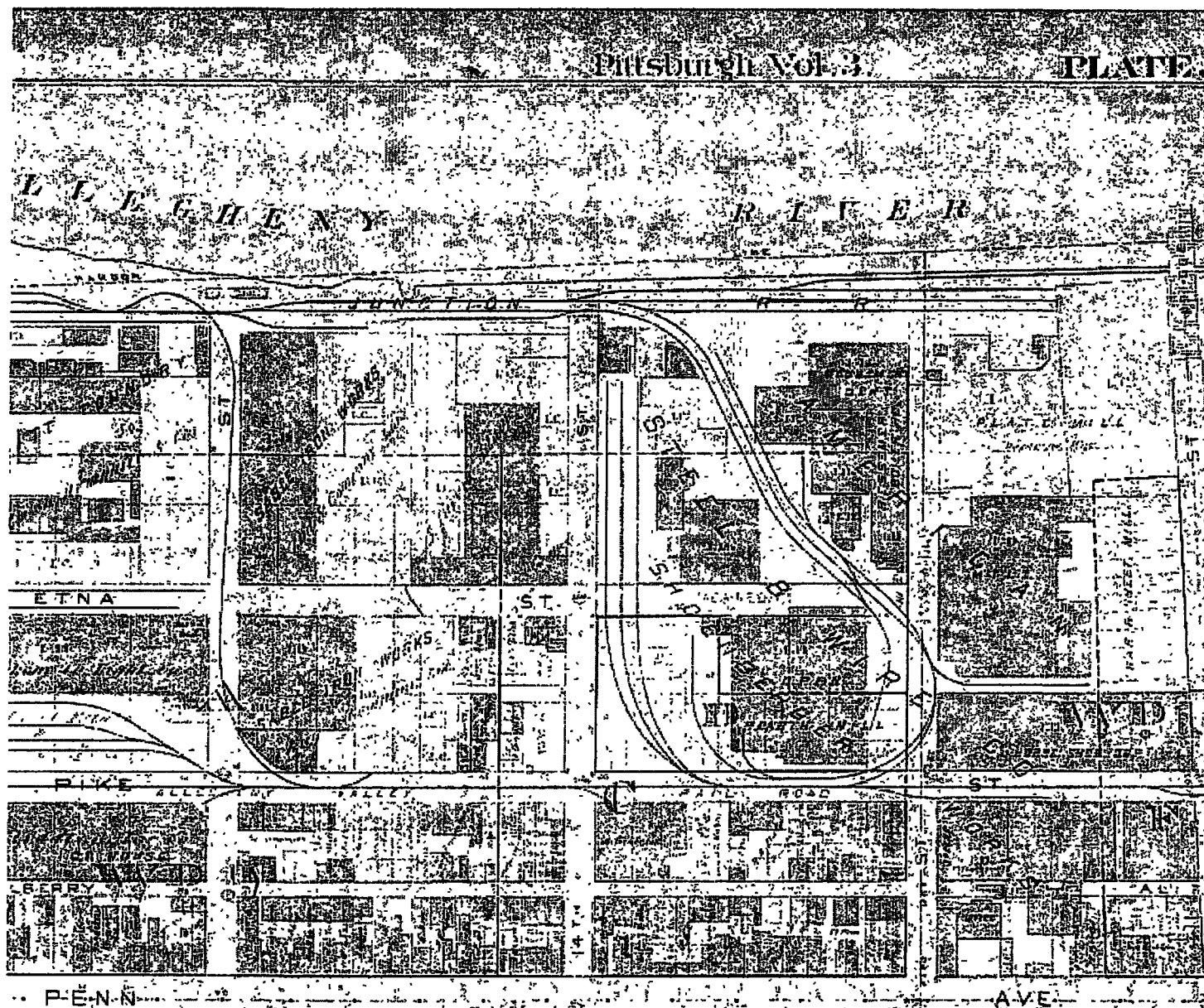
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- ☒ 800 x 600
- ☐ 1024 x 768

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Navigation View

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Buildings on Current Map

Civic Club Thaw's Free Baths
St Philomena R C Church
St Philomena School
Sable Iron Works
Ralston 9th Ward Public School
Fort Pitt Foundry Co
Allegheny County Light Co
Consolidated Ice Co
Star Works of America Sheet & Tin Plate Co
16th Street Bridge
Congregation Ohel Jacob
Sable Iron Works (2)
Market House

Landmarks on Current Map

(None)

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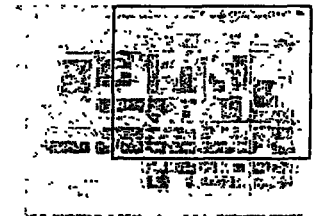
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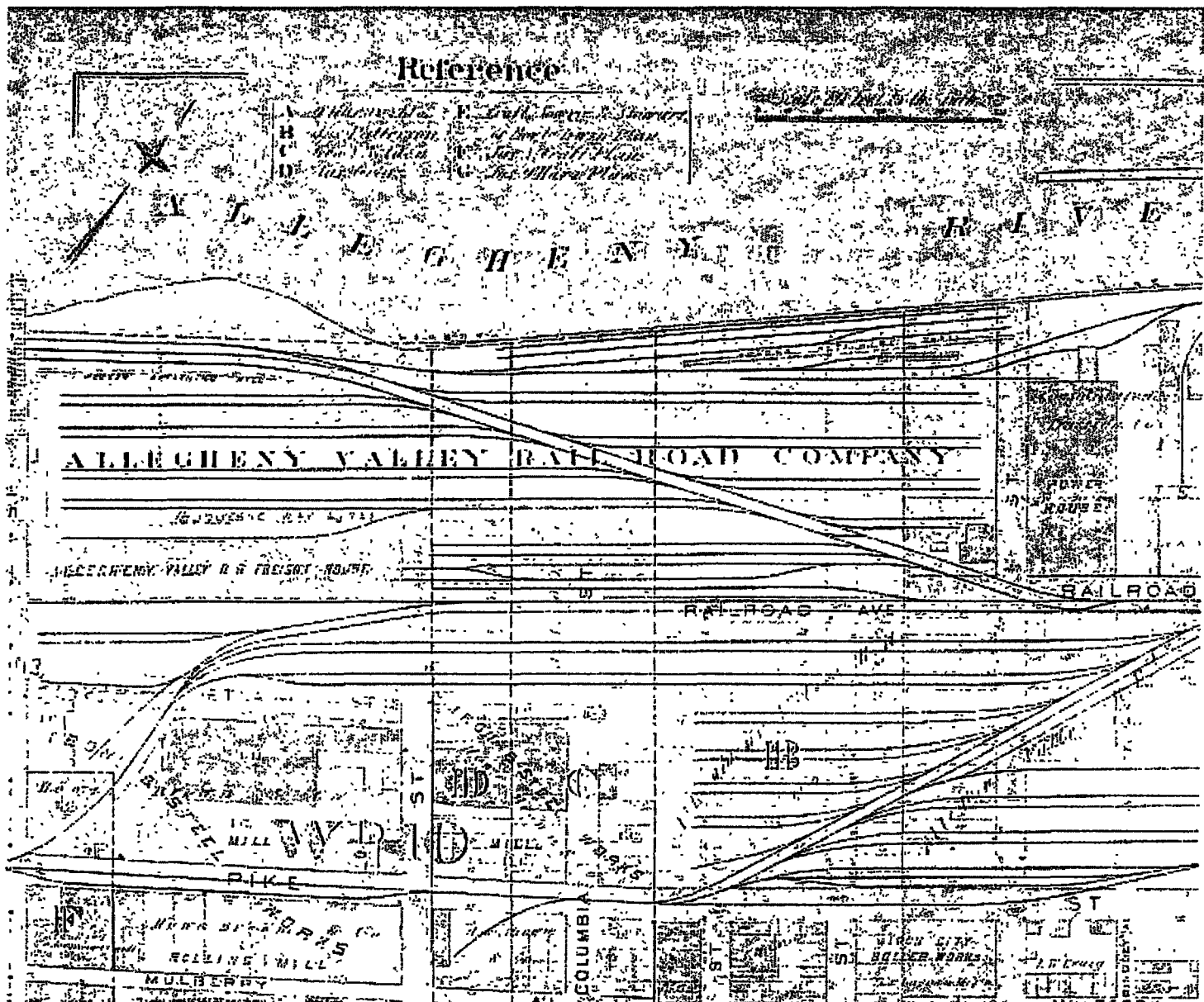
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Buildings on Current Map

Landmarks on Current Map

Star Fire Brick Works
U P Church
Engine No 7
Sheet Metal Works
R Monroe & Sons Boiler Works
Central Savings & Trust Co
Oil Well Supply Co
Allegheny Valley R R Freight House
Standard Underground Cable Co
Consolidated Traction Co
Armstrong Cork Co
Pennsylvania Star Union Line & Transportation Co

(None)

Philadelphia Co Shops
National Supply Co
St Stanislas R C Polish School
St Stanislas R C Church
Gloeckler Refrigerator Factory
Hardie Bros Confectioners
Produce Exchange
Iron City Boiler Works
Railway Elliptic Spring Manufacturing Mill No 1
St Patrick's R C Church
Allegheny Valley R R Co
Sisters of Mercy Convent
Central Savings & Trust Co (2)

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1906 Volume 3 - Central Pittsburgh: Wards 6-12 and 15-17: Plate 14

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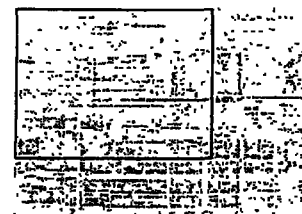
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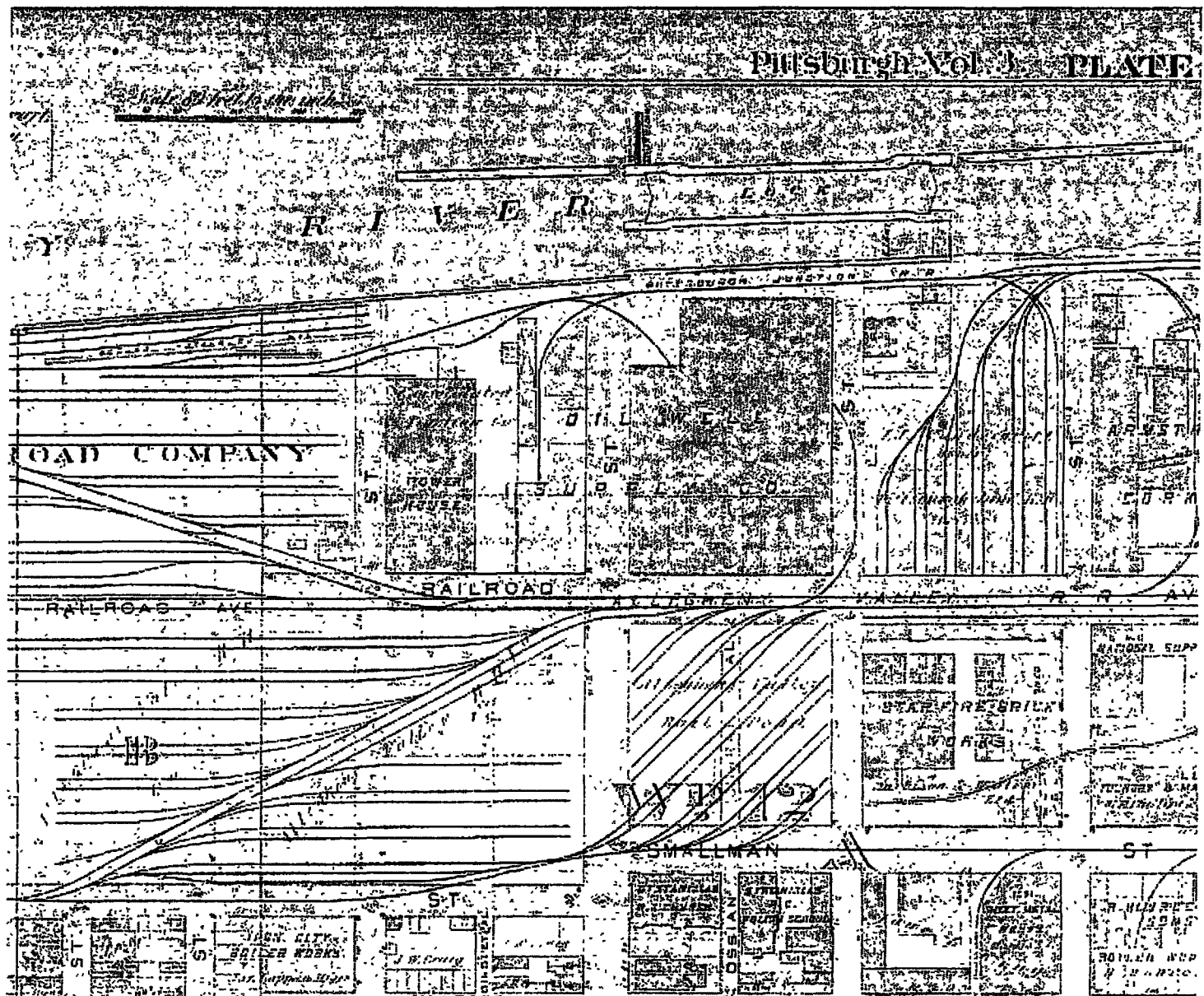
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- ☐ 1024 x 768

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800 x 600 (width x height)
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Buildings on Current Map

Star Fire Brick Works
U P Church
Engine No 7
Sheet Metal Works
R Monroe & Sons Boiler Works
Central Savings & Trust Co
Oil Well Supply Co
Allegheny Valley R R Freight House
Standard Underground Cable Co
Consolidated Traction Co
Armstrong Cork Co
Pennsylvania Star Union Line & Transportation Co

Landmarks on Current Map

(None)

Philadelphia Co Shops
National Supply Co
St Stanislas R C Polish School
St Stanislas R C Church
Gloeckler Refrigerator Factory
Hardie Bros Confectioners
Produce Exchange
Iron City Boiler Works
Railway Elliptic Spring Manufacturing Mill No 1
St Patrick's R C Church
Allegheny Valley R R Co
Sisters of Mercy Convent
Central Savings & Trust Co (2)

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- ☒ 12% Zoom

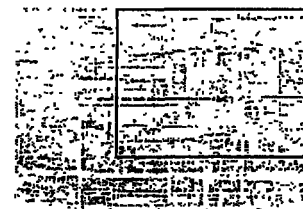
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- ☐ 600 x 400
- ☒ 800 x 600
- ☐ 1024 x 768

Current Image Resolution:

800 x 600 (width x height)
12 percent zoom

Navigation View

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Landmarks on Current Map

(None)

Totten B Hogg Iron & Steel Foundry Co
Duquesne Cigar Co
Trinity M E Church
O'Hara Public School
Scaife Foundry & Machine Co
Wagon Factory
Union Storage Co
Railway Spring Co
Baird Machine Co
Pittsburgh Stoker Manufacturing Co
Marshall Foundry Co
Carnegie Steel Co
Russell Machine Co
Pittsburgh Screw & Bolt Works
Pittsburgh Valve Foundry & Construction Co
Pitts Screw & Bolt Works
G A Jelley Foundry Co
Iron & Steel Band Works
Brass & Bronze Foundry
Iron City Metal Ceiling Co
Pittsburgh Valve Foundry & Construction Co (2)

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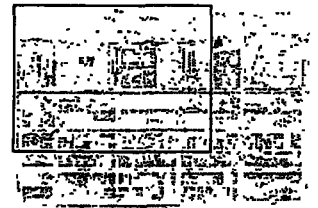
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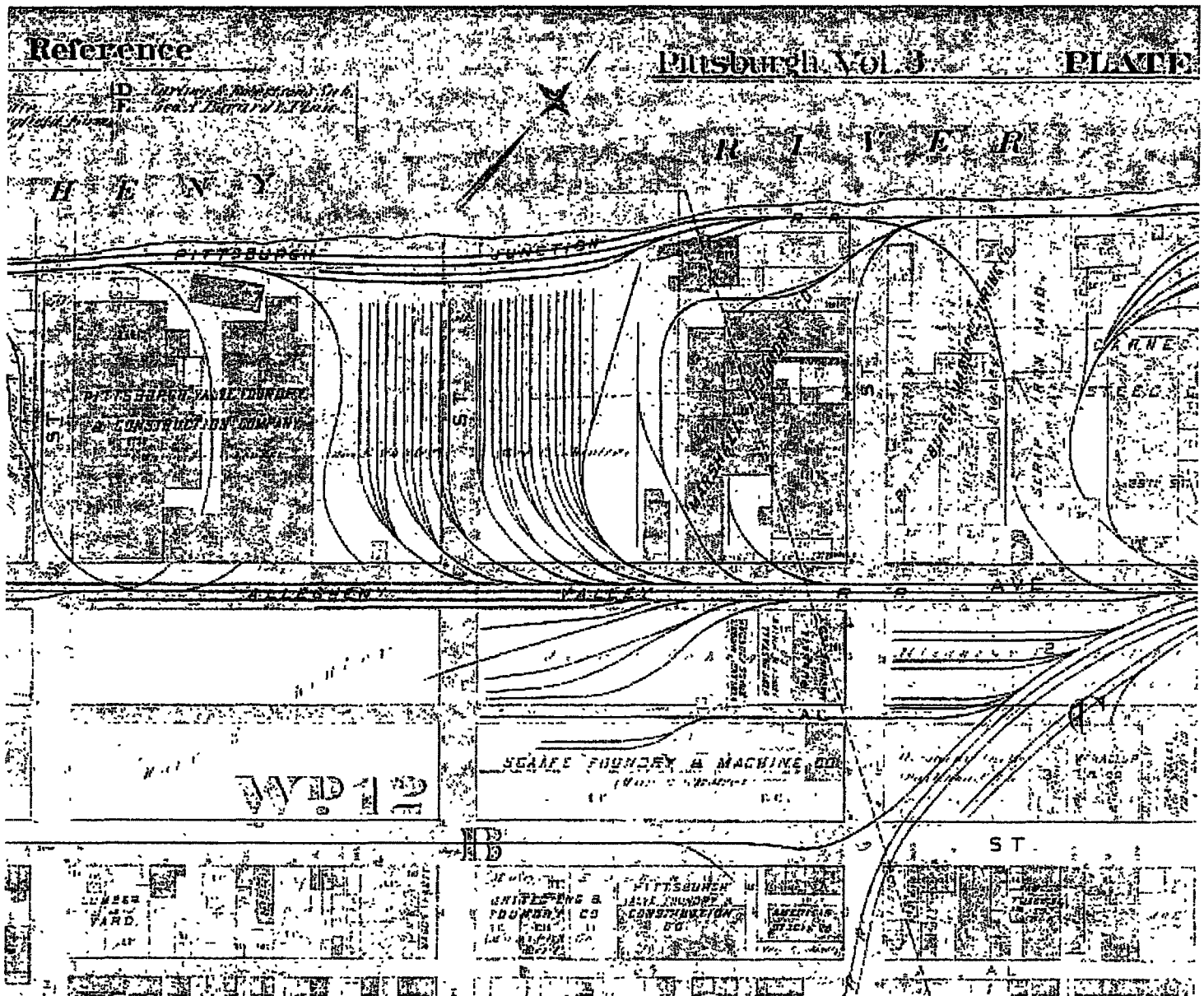
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- ☒ 800 x 600
- ☐ 1024 x 768

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Buildings on Current Map

Heppenstall Forge & Knife Co
12th Ward Police Station
May Stern Co Warehouse
Fort Pitt Iron Works
Atlas Paint Ltd
United Engineering & Foundry Company
American Stogie Co
Pittsburgh Valve & Foundry
Iron Bedstead Works
Fawcus Machine Co
29th St Station
Best Manufacturing Co
Phoenix Brewery

Landmarks on Current Map

(None)

Totten B Hogg Iron & Steel Foundry Co
Duquesne Cigar Co
Trinity M E Church
O'Hara Public School
Scaife Foundry & Machine Co
Wagon Factory
Union Storage Co
Railway Spring Co
Baird Machine Co
Pittsburgh Stoker Manufacturing Co
Marshall Foundry Co
Carnegie Steel Co
Russell Machine Co
Pittsburgh Screw & Bolt Works
Pittsburgh Valve Foundry & Construction Co
Pitts Screw & Bolt Works
G A Jelley Foundry Co
Iron & Steel Band Works
Brass & Bronze Foundry
Iron City Metal Ceiling Co
Pittsburgh Valve Foundry & Construction Co (2)

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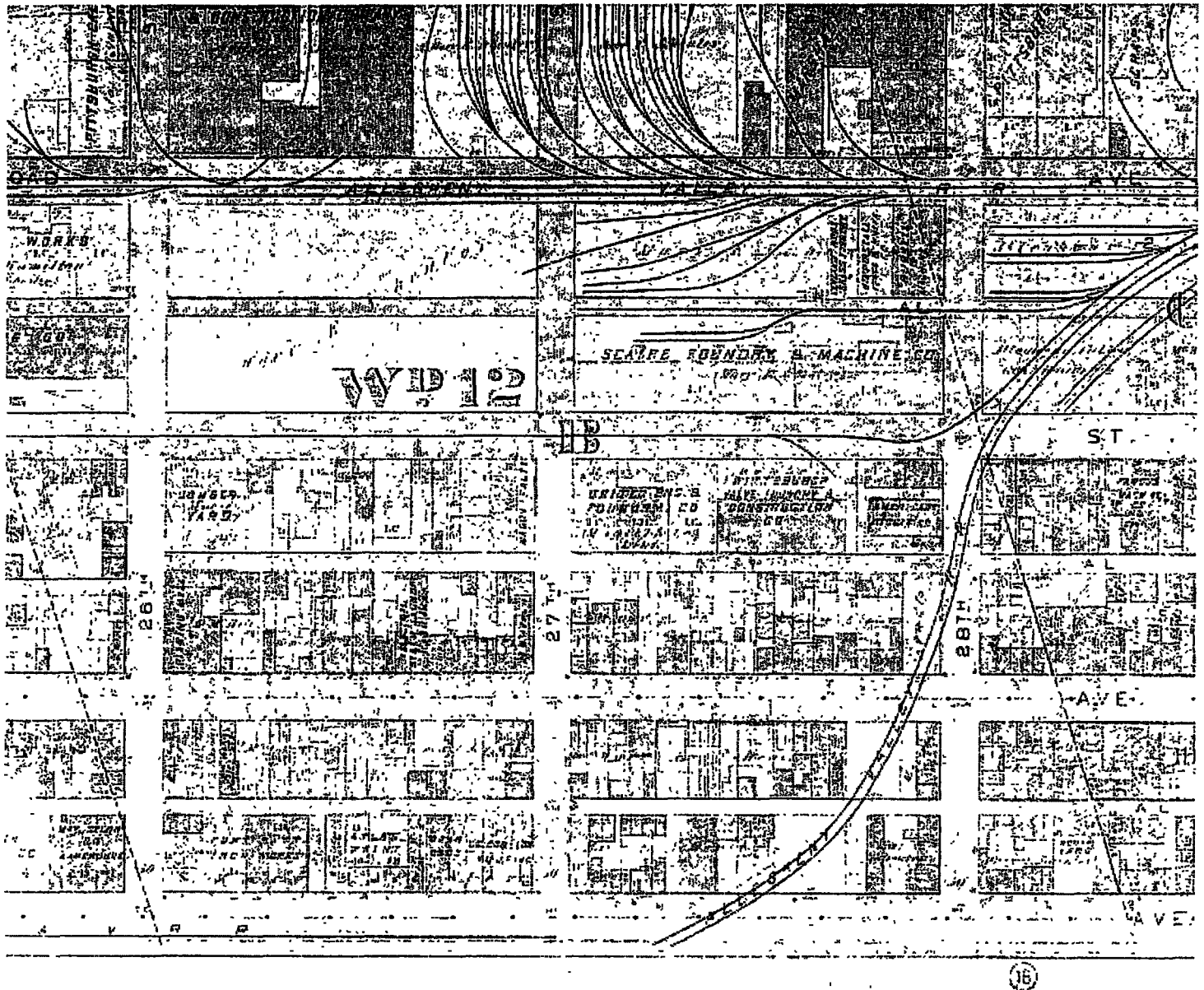
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1906 Volume 3 - Central Pittsburgh: Wards 6-12 and 15-17: Plate 15

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Buildings on Current Map

Heppenstall Forge & Knife Co
12th Ward Police Station
May Stern Co Warehouse
Fort Pitt Iron Works
Atlas Paint Ltd
United Engineering & Foundry Company
American Stogie Co
Pittsburgh Valve & Foundry
Iron Bedstead Works
Fawcus Machine Co
29th St Station
Best Manufacturing Co
Phoenix Brewery

Landmarks on Current Map

(None)

Totten B Hogg Iron & Steel Foundry Co
Duquesne Cigar Co
Trinity M E Church
O'Hara Public School
Scaife Foundry & Machine Co
Wagon Factory
Union Storage Co
Railway Spring Co
Baird Machine Co
Pittsburgh Stoker Manufacturing Co
Marshall Foundry Co
Carnegie Steel Co
Russell Machine Co
Pittsburgh Screw & Bolt Works
Pittsburgh Valve Foundry & Construction Co
Pitts Screw & Bolt Works
G A Jelley Foundry Co
Iron & Steel Band Works
Brass & Bronze Foundry
Iron City Metal Ceiling Co
Pittsburgh Valve Foundry & Construction Co (2)

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1906 Volume 3 - Central Pittsburgh: Wards 6-12 and 15-17: Plate 15

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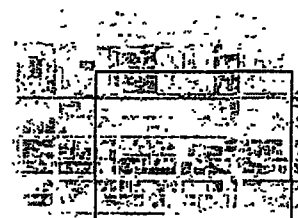
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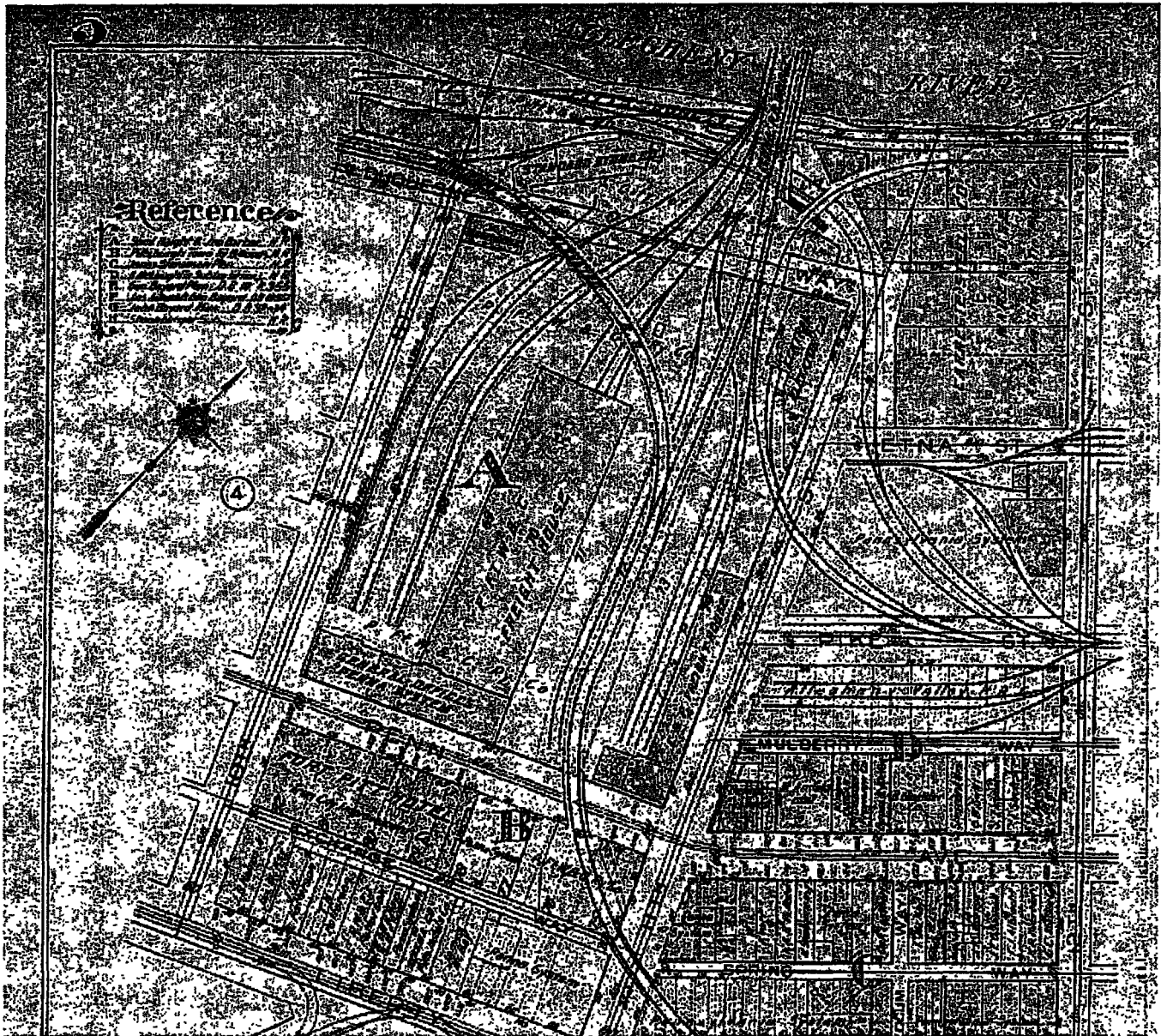
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- ☐ 1024 x 768

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Buildings on Current Map

Power House
Pennsylvania System
Pennsylvania Station
Fort Pitt Hotel
General Offices Pennsylvania System
Pittsburgh Fort Wayne & Chicago R R (P Ft W
& C R R) Freight House
C & P Freight House
Central Elevator Co
Pitts
Standard Stone Co
Kingan Provision Co
Carnegie Steel Co Warehouse

Landmarks on Current Map

(None)

Historic Pittsburgh

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1923 Volume 1 - Central Pittsburgh: Wards 1-6 and 9: Plate 5b

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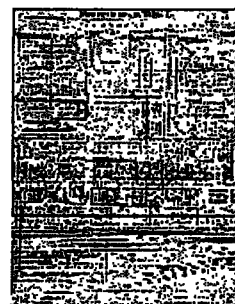
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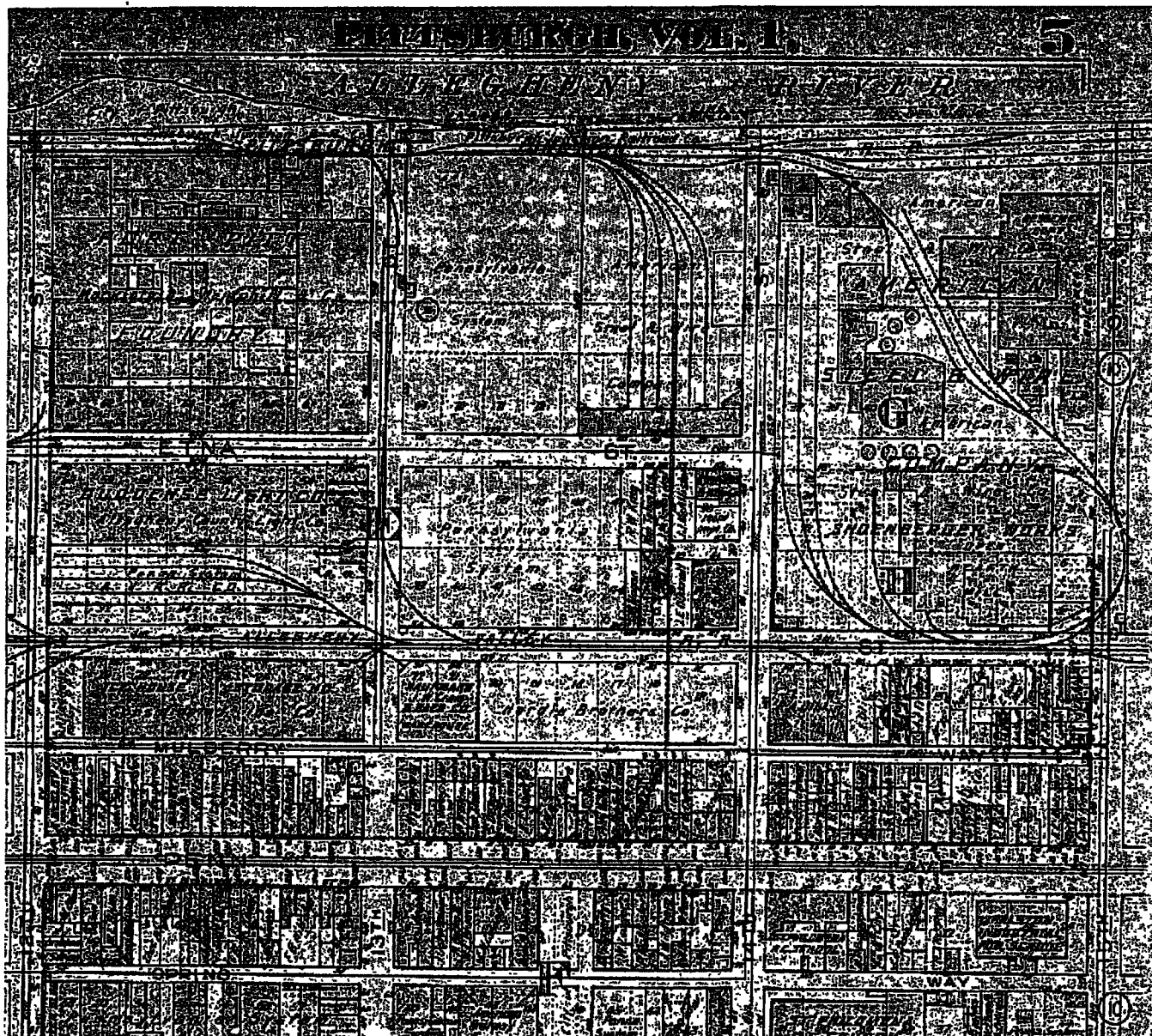
- ☐ 600 x 400
- ☒ 800 x 600
- ☐ 1024 x 768

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679 x 600 (width x height)
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Navigation View

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Buildings on Current Map

Pennsylvania System
Pennsylvania Station
Seltzer Building
A McCloy Printers
Marietta Chain Co
Ice House
Storage House
A V RR Co
Fort Pitt Foundry Co
Kaufmann & Baer Co
Allegheny Valley R R Co
St Philomena R C Church
Engine House No 15

Landmarks on Current Map

(None)

Historic Pittsburgh

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1923 Volume 1 - Central Pittsburgh: Wards 1-6 and 9: Plate 10a

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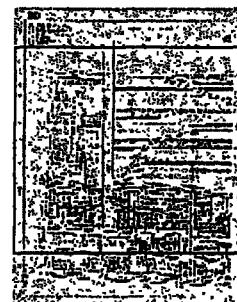
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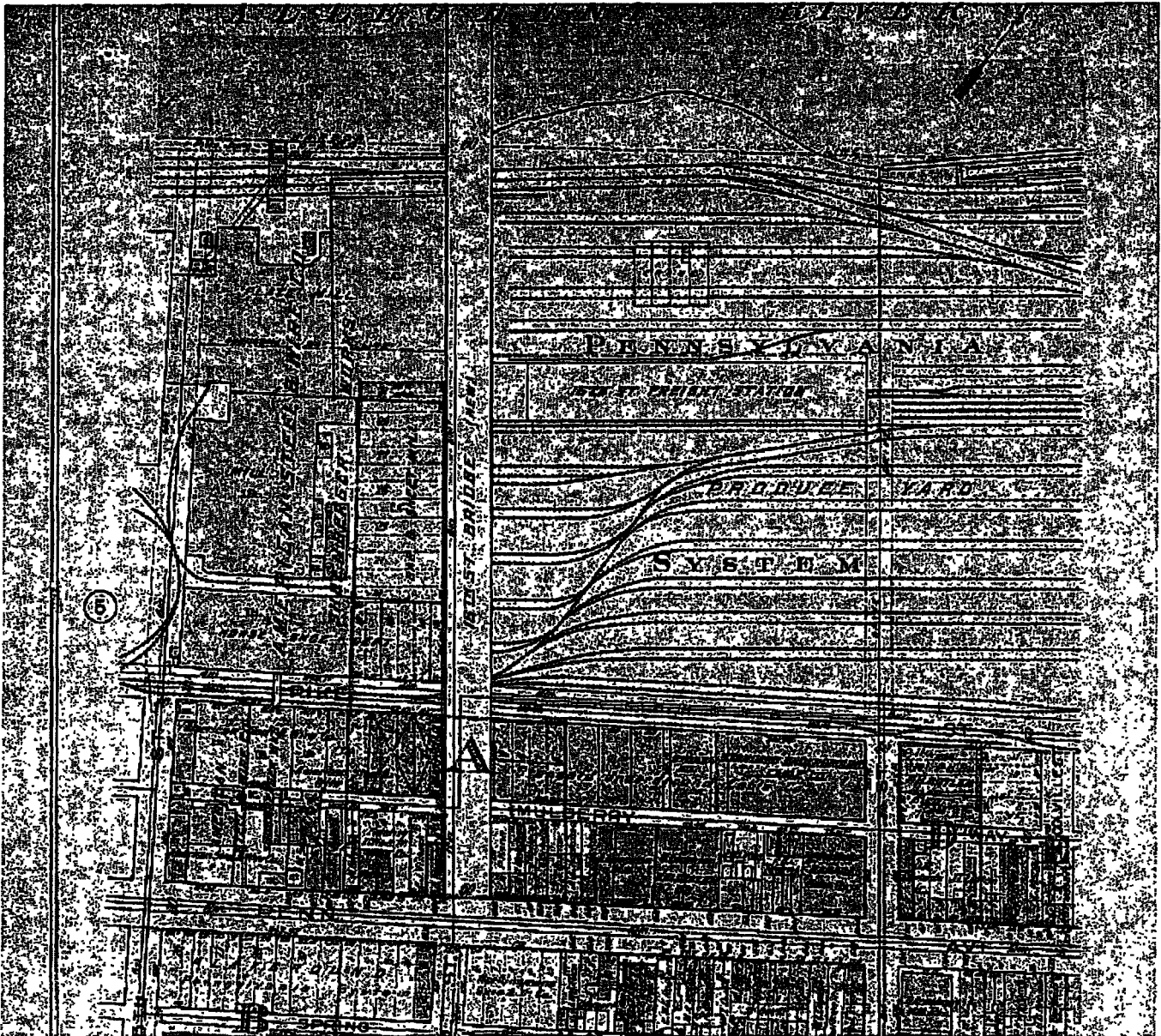
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Navigation View



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Buildings on Current Map

[Horse Shoe Dept](#)
[16th Street Bridge](#)
[Bar & Sheet Mill](#)
[Hardie Bros Co](#)
[Pennsylvania System](#)
[Produce Yard](#)
[16th St Freight Station](#)
[St Elizabeth RC Church](#)
[B Gloerler Co](#)
[Storage House](#)
[Penn Incline Plane](#)
[Garage](#)
[Standard Underground Cable Co](#)

Landmarks on Current Map

[Playground](#)

Historic Pittsburgh

[Full-Text](#)[Maps](#)[Images](#)[Finding Aids](#)[Census](#)[Chronology](#)[HSWP Catalog](#)

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1923 Volume 1 - Central Pittsburgh: Wards 1-6 and 9: Plate 10b

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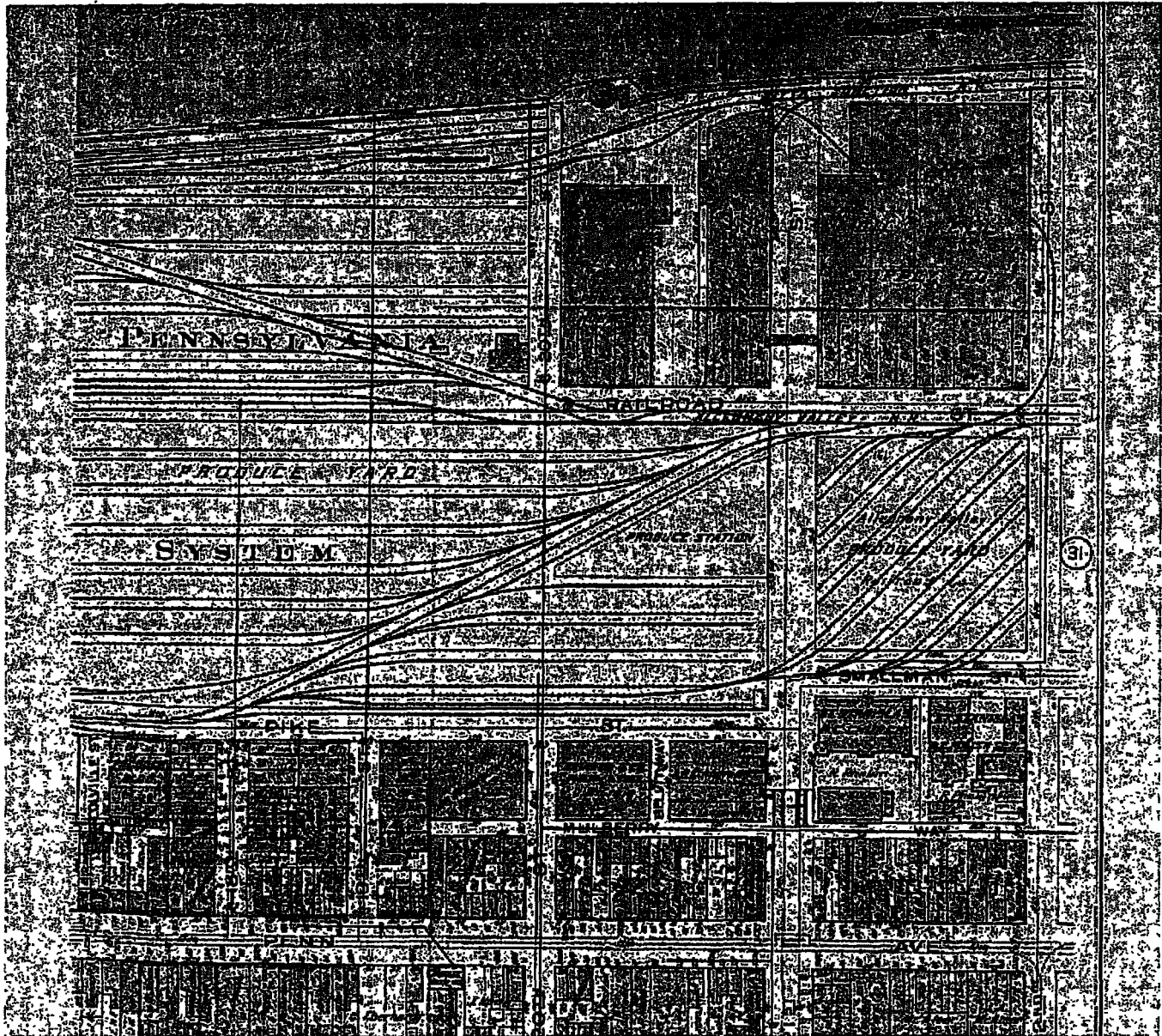
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- ☒ 800 x 600
- ☐ 1024 x 768

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Navigation View

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Buildings on Current Map

Landmarks on Current Map

Lock
Railway Steel Spring Manufacturing Mill No 2
Railway Steel Spring Manufacturing Mill No 1
Public Bath House
Wm Penn Trust Co
Franklin Savings & Trust Co
Board of Education
St Stanislas R C Church
Produce Station
Produce Yard
Garage
St Stanislas R C Polish Church
Power House

(None)

Historic Pittsburgh

[Full-Text](#)[Maps](#)[Images](#)[Finding Aids](#)[Census](#)[Chronology](#)[HSWP Catalog](#)

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1923 Volume 1 - Central Pittsburgh: Wards 1-6 and 9: Plate 31a

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- ☐ 25% Zoom
- ☒ 12% Zoom

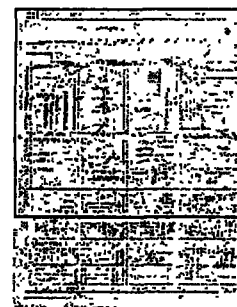
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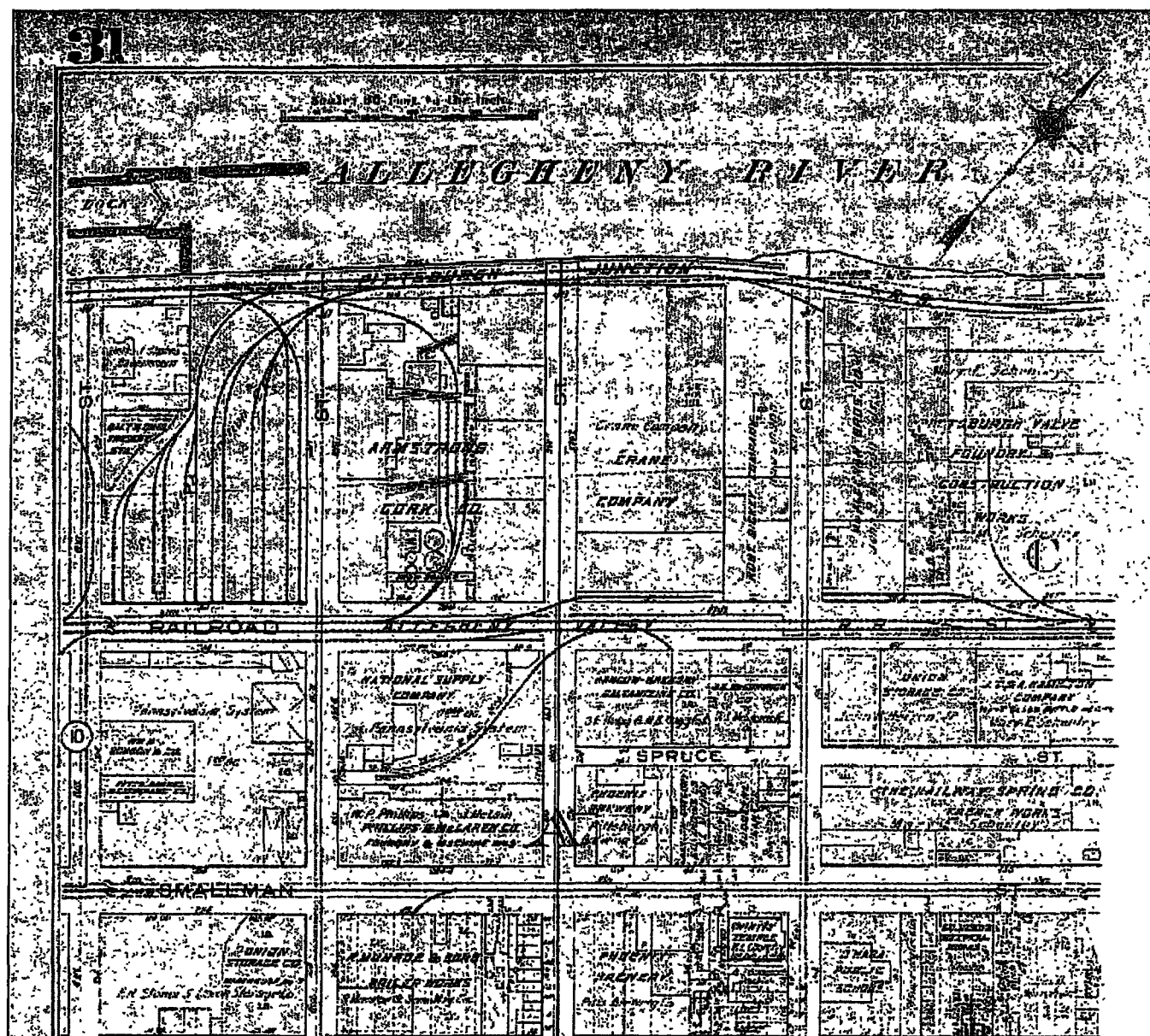
- ☐ 600 x 400
- ☒ 800 x 600
- ☐ 1024 x 768

Current Image Resolution:

676 x 600 (width x height)
12 percent zoom

Navigation View

[View Full Map](#)



Buildings on Current Map

R Monroe & Sons Storage Yard
Union Storage Co
Pittsburgh Barrel & Cooperage Company
William N Gordon & Company
B & O R R (Baltimore & Ohio Rail Road)
Freight Station
Pittsburgh Junction R R
Engine House No 7
Equitable Gas Co
United Presbyterian Church
R Monroe & Sons Boiler Works
Phillips & McLaren Company Foundry &
Machine Works

Landmarks on Current Map

(None)

[National Supply Company](#)
[Allegheny Valley R R Co](#)
[Armstrong Cork Company](#)
[Universal Waste Products Company](#)
[G A Schnagel & Sons](#)
[Taylor & Dean](#)
[Phoenix Brewery](#)
[Trinity Temple](#)
[Phoenix Brewery \(2\)](#)
[Hanlon-Gregory Galvanizing Company](#)
[Duquesne Cigar Co](#)
[Hanlon-Gregory Galvanizing Company \(2\)](#)
[J S McCormick Co](#)
[Crane Company](#)
[Robert Dickey Company](#)
[The Simonds Manufacturing Company](#)
[Pittsburgh Reinforced Brazing & Machine](#)
[Company](#)
[O'Hara Public School](#)
[G C Nobbs Sheet Metal Works](#)
[The Railway Spring Company French Works](#)
[Union Storage Co \(2\)](#)
[J T & A Hamilton Co](#)
[McAleenan Brothers Company](#)
[Pittsburgh Valve Foundry & Construction Works](#)
[Lock](#)

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Map Index

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1923 Volume 1 - Central Pittsburgh: Wards 1-6 and 9: Plate 31b

Return to the main [Index Map](#) for this volume.

Select Resolution Level

- ☐ 100% Zoom
- ☐ 50% Zoom
- ☐ 25% Zoom
- ☒ 12% Zoom

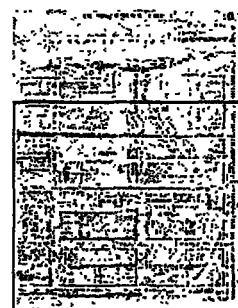
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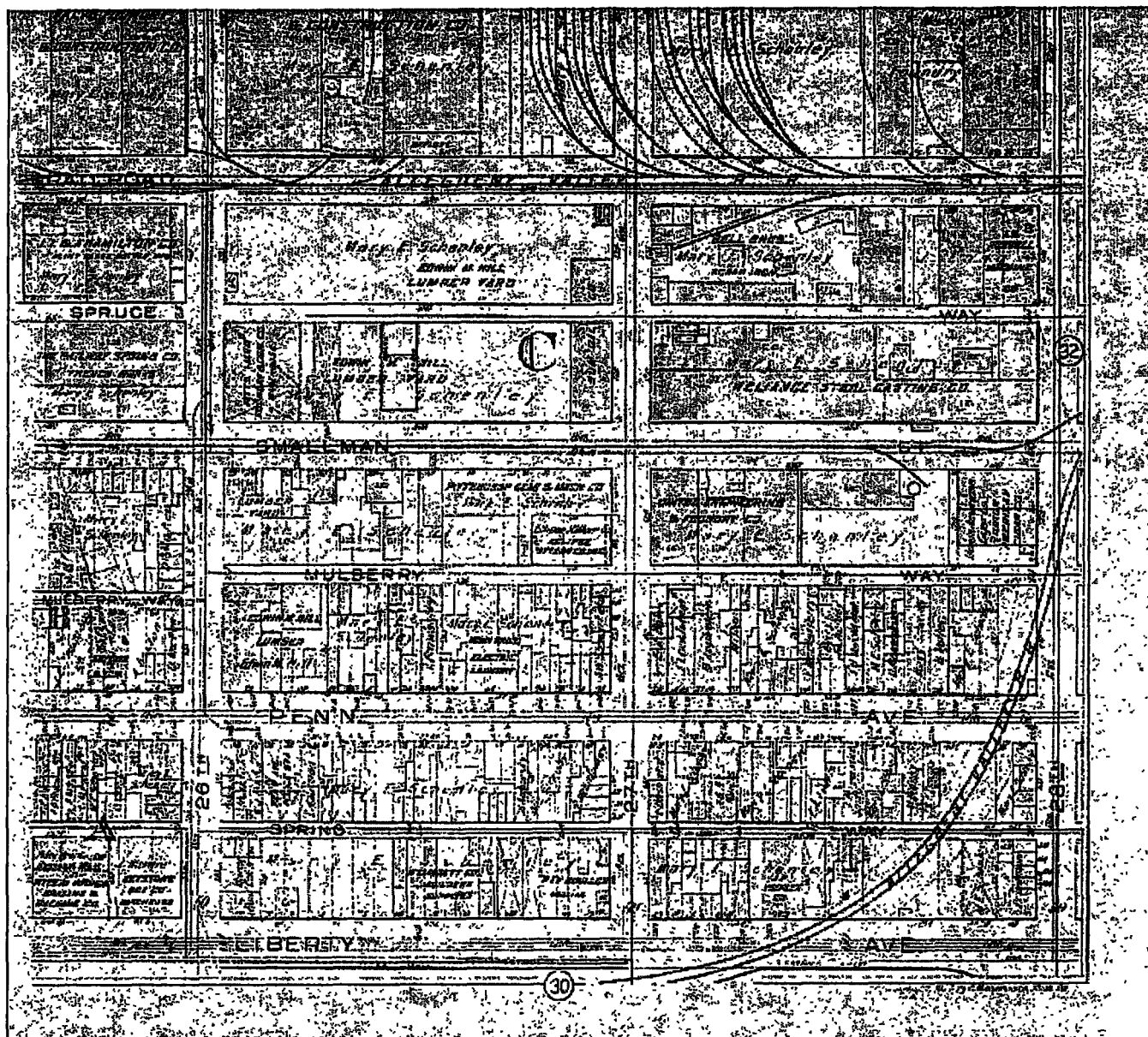
- ☐ 600 x 400
- ☒ 800 x 600
- ☐ 1024 x 768

Current Image Resolution:

676 x 600 (width x height)
12 percent zoom

Navigation View

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Buildings on Current Map

Pittsburgh Reinforced Brazing & Machine Company
Keystone Box Company
S B Floyd & Son
The Railway Spring Company French Works
J T & A Hamilton Co Flint Glass Bottle Manufacturing
Penn Ave Police Station
Edwin M Hill Lumber Yard
Pittsburgh Valve Foundry & Construction Co Warehouse
Edwin M Hill Lumber Yard (2)
Edwin M Hill Lumber Yard (3)

Landmarks on Current Map

(None)

Pittsburgh Valve Foundry & Construction Co
Pittsburgh Junction R R
W T Leggett Company Builders Supplies
P Le Goullon Roofing
Mohn Brothers Electric Laundry
Eclipse Pattern Company Inc
Pittsburgh Machine & Gear Company
Sun Oil Company
Allegheny Valley R R Co
J P Koehler Co
United Engineering & Foundry Company
Reliance Steel Casting Company
Bell Brothers Scrap Iron
Russell Machine Co
Union American Cigar Company

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1923 Volume 1 - Central Pittsburgh: Wards 1-6 and 9: Plate 32a

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Select Resolution Level

- ☐ 100% Zoom
- ☐ 50% Zoom
- ☐ 25% Zoom
- ☒ 12% Zoom

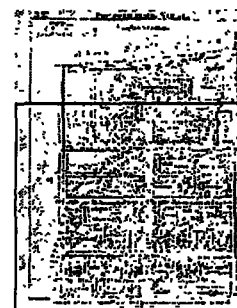
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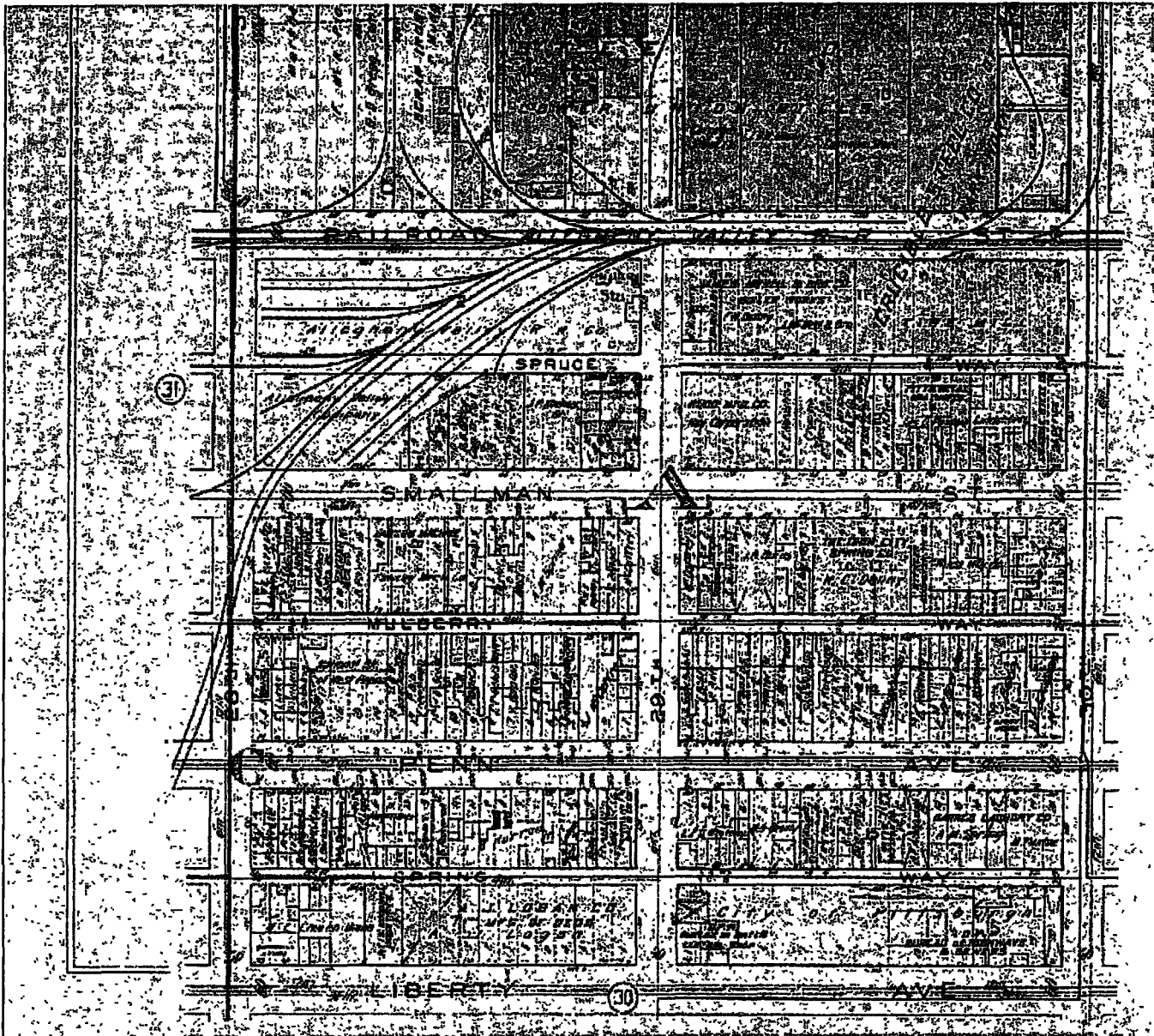
- ☐ 600 x 400
- ☒ 800 x 600
- ☐ 1024 x 768

Current Image Resolution:

676 x 600 (width x height)
12 percent zoom

Navigation View

[View Full Map](#)



Buildings on Current Map

[Goodwill Store](#)
[Allegheny Valley R R Co](#)
[Pittsburgh Junction R R](#)
[Pittsburgh Goodwill Industries](#)
[Fawcus Machine Co](#)
[A J Logan Company Manufacturer of Beds](#)
[Franklin Savings & Trust Co](#)
[Carnegie Steel Company Lower Union Mills](#)
[29th St Station](#)
[Lower Union Mills Office](#)
[Department of Public Works Bureau of Water](#)
[Rudd Manufacturing Company](#)
[James McNeil & Brothers Company Boiler](#)

Landmarks on Current Map

(None)

Works

Pittsburgh Pattern Company

Iron City Spring Co

Tire Mill

Department of Public Works Bureau of

Highways & Sewers

Barnes Laundry Company

Pittsburgh Metal Blazing Company

Crucible Steel Company Office

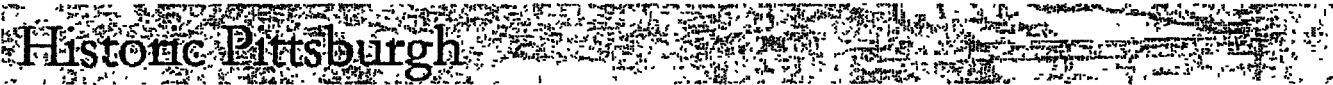
Crucible Steel Co of America

J K Davison Brothers Sand & Gravel

Herr's Island Bridge

Contact Us.

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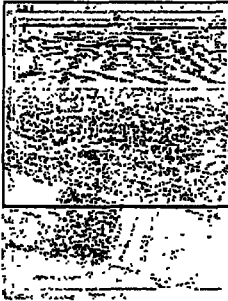
Full-Text	Maps	Images	Finding Aids	Census	Chronology	HSWP Catalog
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Map Index

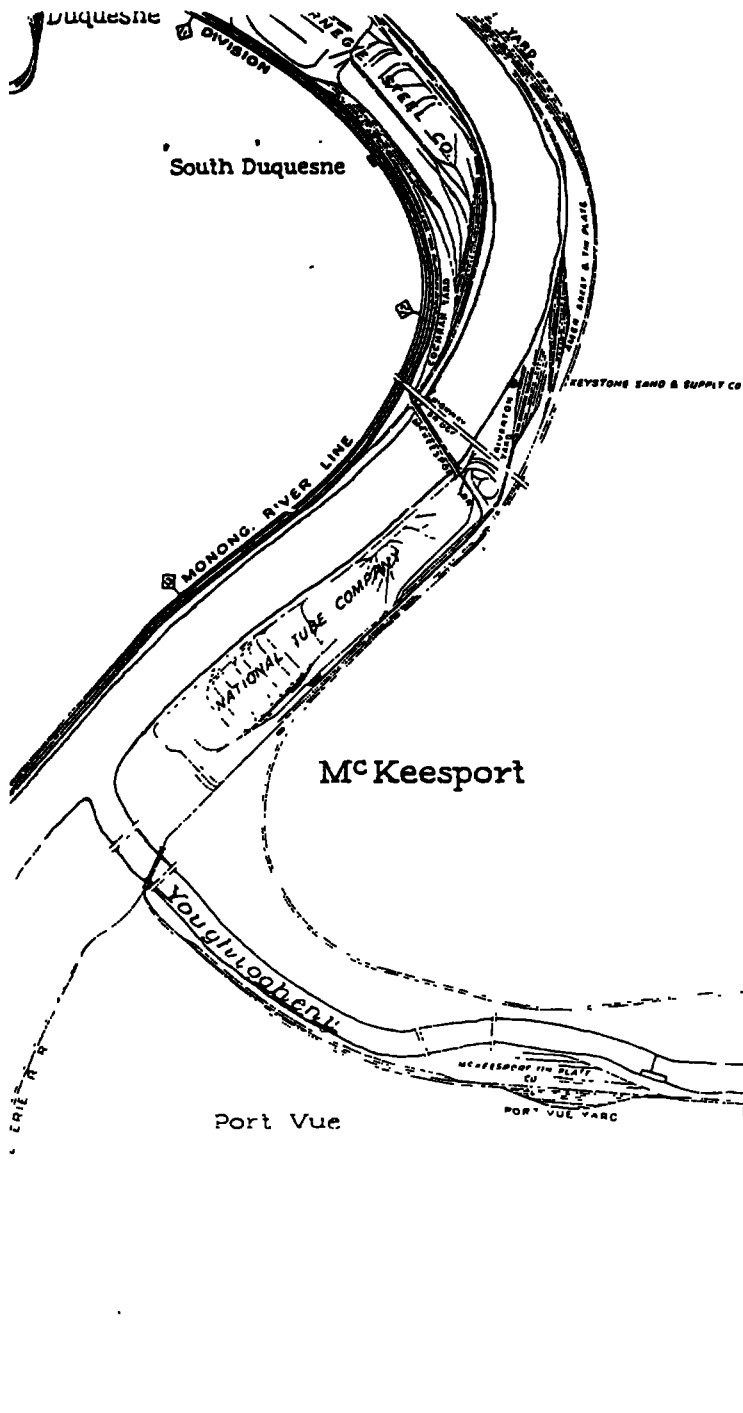
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1923 Volume 1 - Central Pittsburgh: Wards 1-6 and 9: Plate 30a

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Select Resolution Level	Select Image Size	Current Image Resolution:	Navigation View
<input type="radio"/> 100% Zoom	<input type="radio"/> 600 x 400	676 x 600 (width x height)	
<input type="radio"/> 50% Zoom	<input checked="" type="radio"/> 800 x 600	12 percent zoom	
<input type="radio"/> 25% Zoom	<input type="radio"/> 1024 x 768		
<input checked="" type="radio"/> 12% Zoom			

[View Full Map](#)



PENNSYLVANIA R.R. SYSTEM
CENTRAL REGION

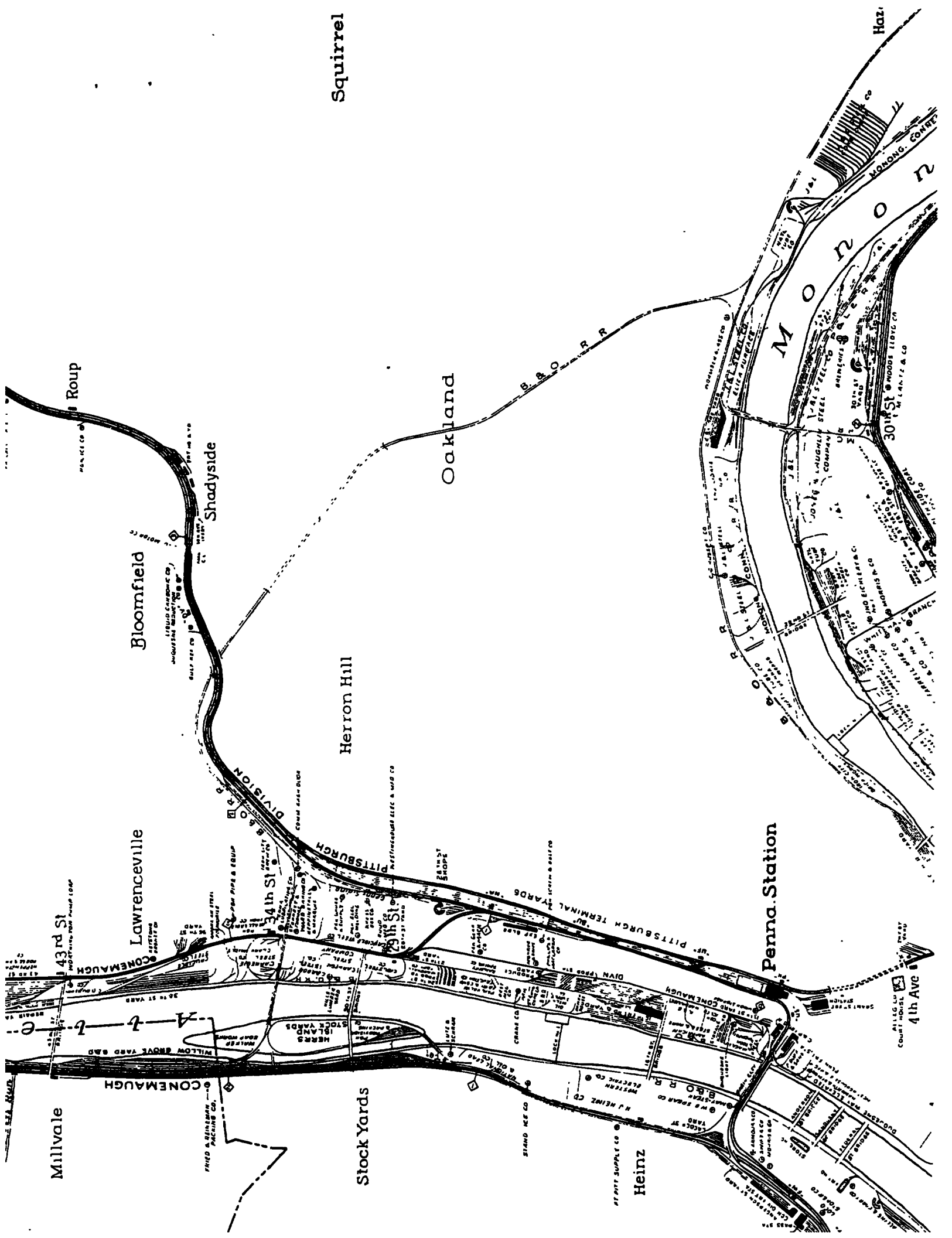
INDUSTRIAL MAP
OF THE
PITTSBURGH
DISTRICT

Office of Chief Engineer M. of W.

Scale $3\frac{1}{2}" = 1 \text{ Mile}$

Aug. 1924

No. 9575



Squirrel

Haz

Roup

Shadyside

Bloomfield

Oakland

Herron Hill

Lawrenceville

Penna. Station

Millvale

Stock Yards

Heinz

4th Ave

MONONG. COUNTY

30th St

MONONG. COUNTY

30th St

MONONG. COUNTY

30th St

MONONG. COUNTY

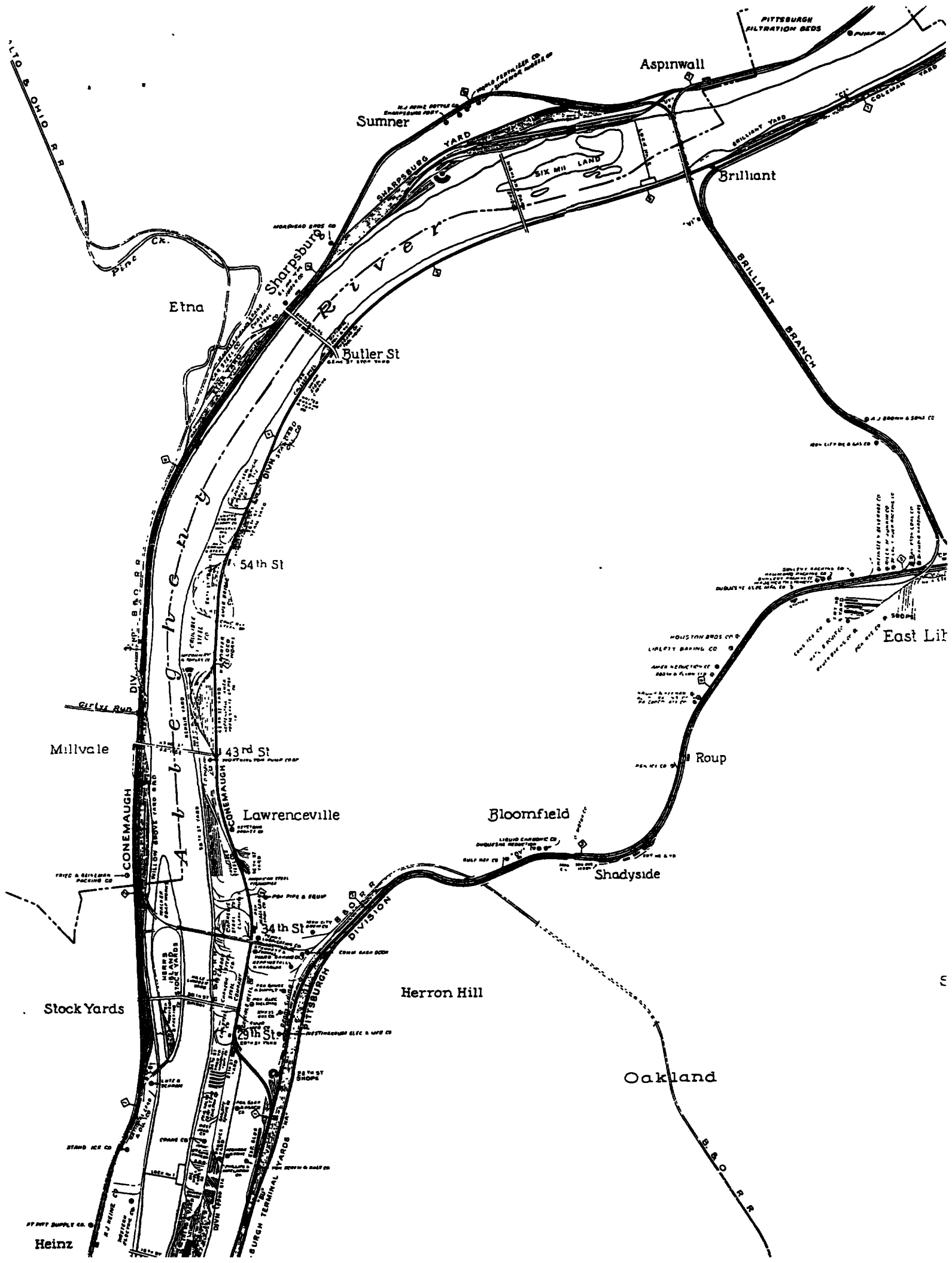
30th St

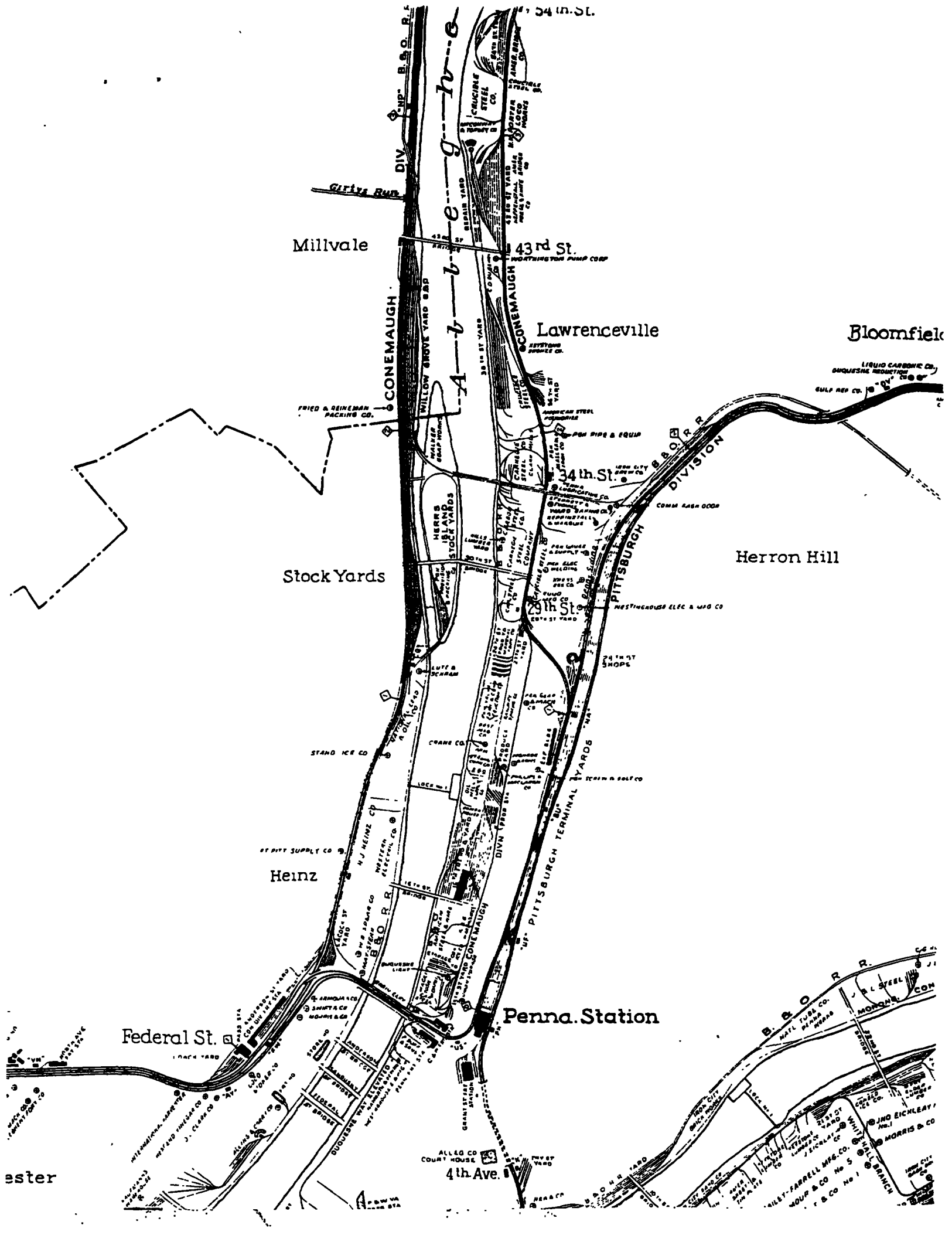
MONONG. COUNTY

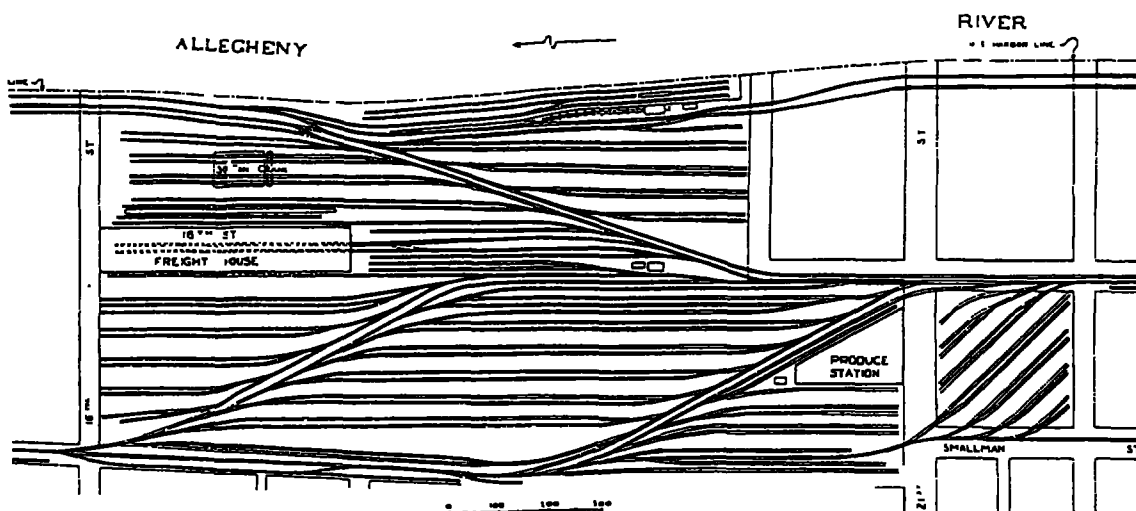
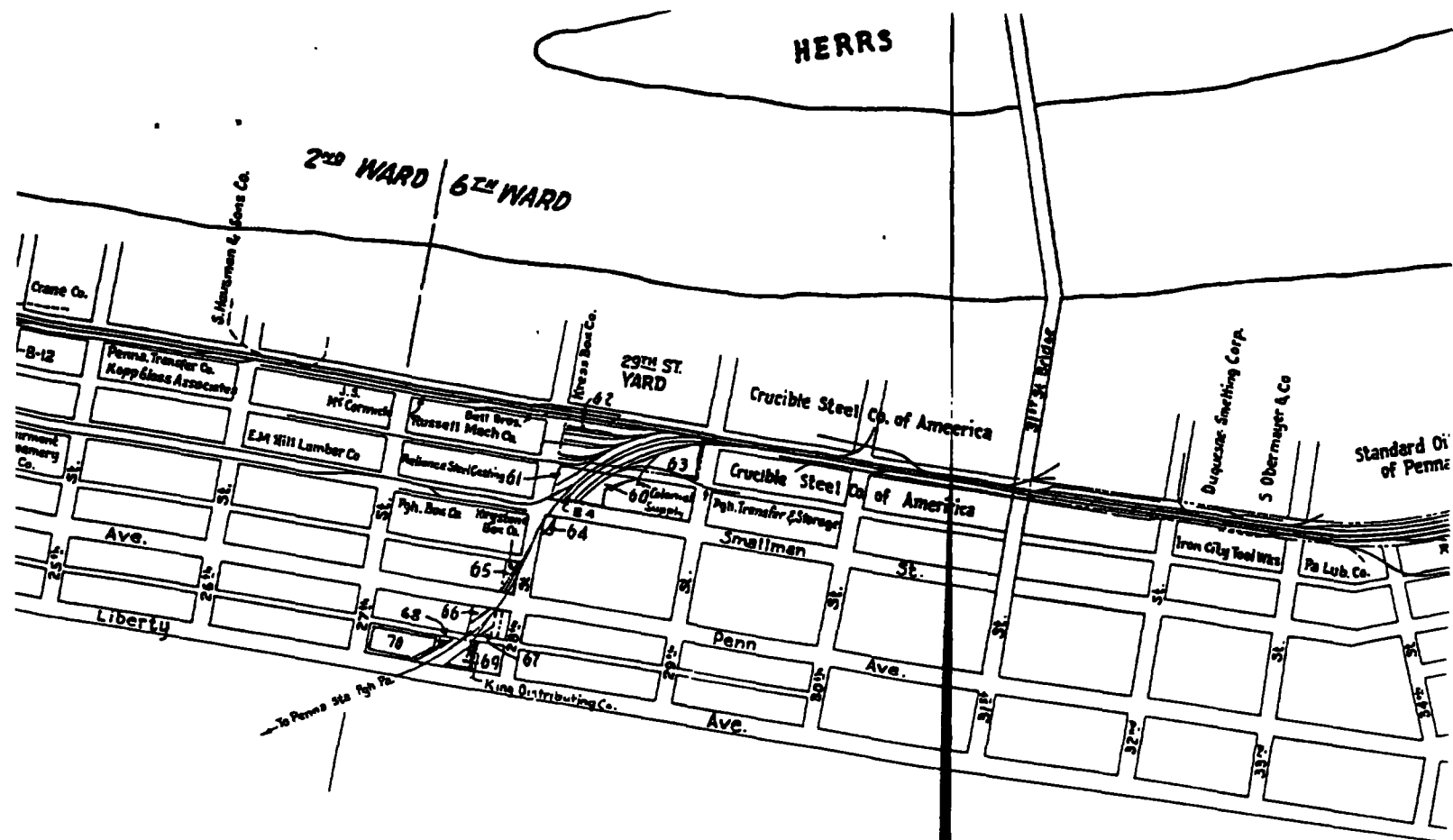
30th St

MONONG. COUNTY

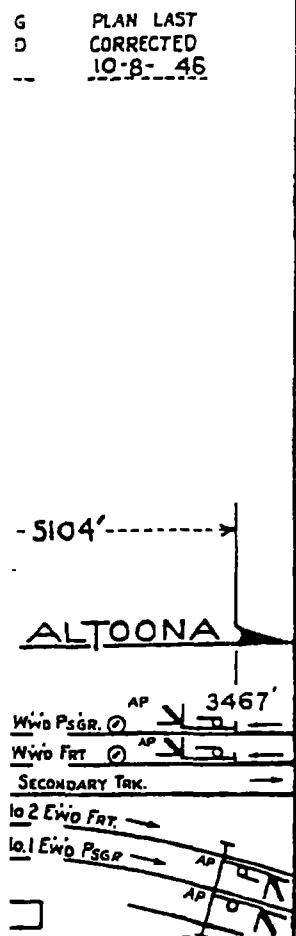
30th St







Plan of Produce Yard and 16th Street Freight Station (c. 1923)



Historic Pittsburgh

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[Maps](#)
[Images](#)
[Finding Aids](#)
[Census](#)
[Chronology](#)
[HSWP Catalog](#)

Map Index

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1929 Volume 10 - Central Pittsburgh: Wards 1-3: Plate 26

Return to the main [Index Map](#) for this volume.

Select Resolution Level
Select Image Size
Current Image Resolution:
Navigation View
☐ 100% Zoom

☐ 50% Zoom

☐ 25% Zoom

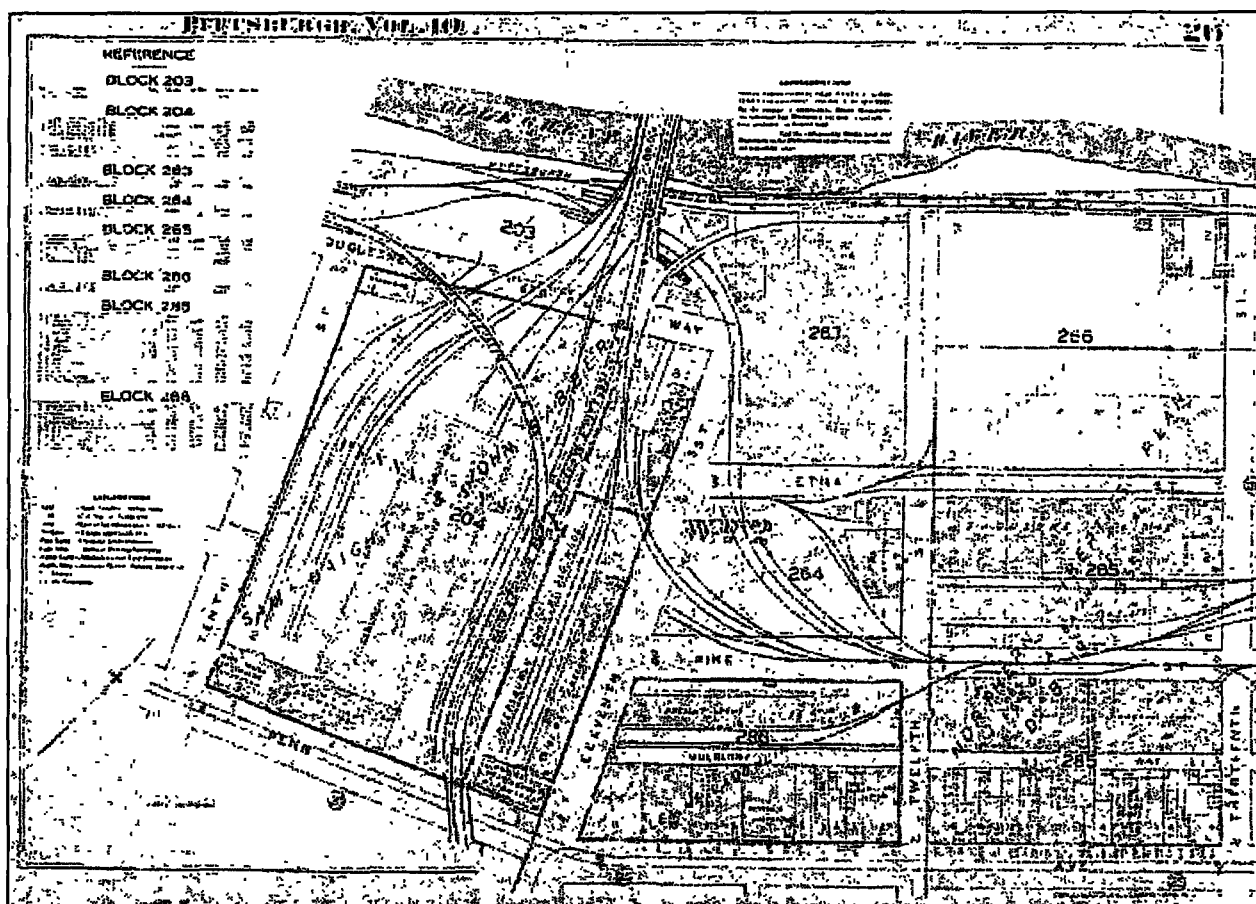
☐ 12% Zoom

☐ 600 x 400

☒ 800 x 600

☐ 1024 x 768

636 x 448 (width x height)
6 percent zoom


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[Images](#)
[Finding Aids](#)
[Census](#)
[Chronology](#)
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1929 Volume 10 - Central Pittsburgh: Wards 1-3: Plate 27

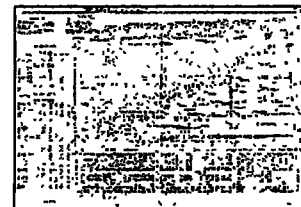
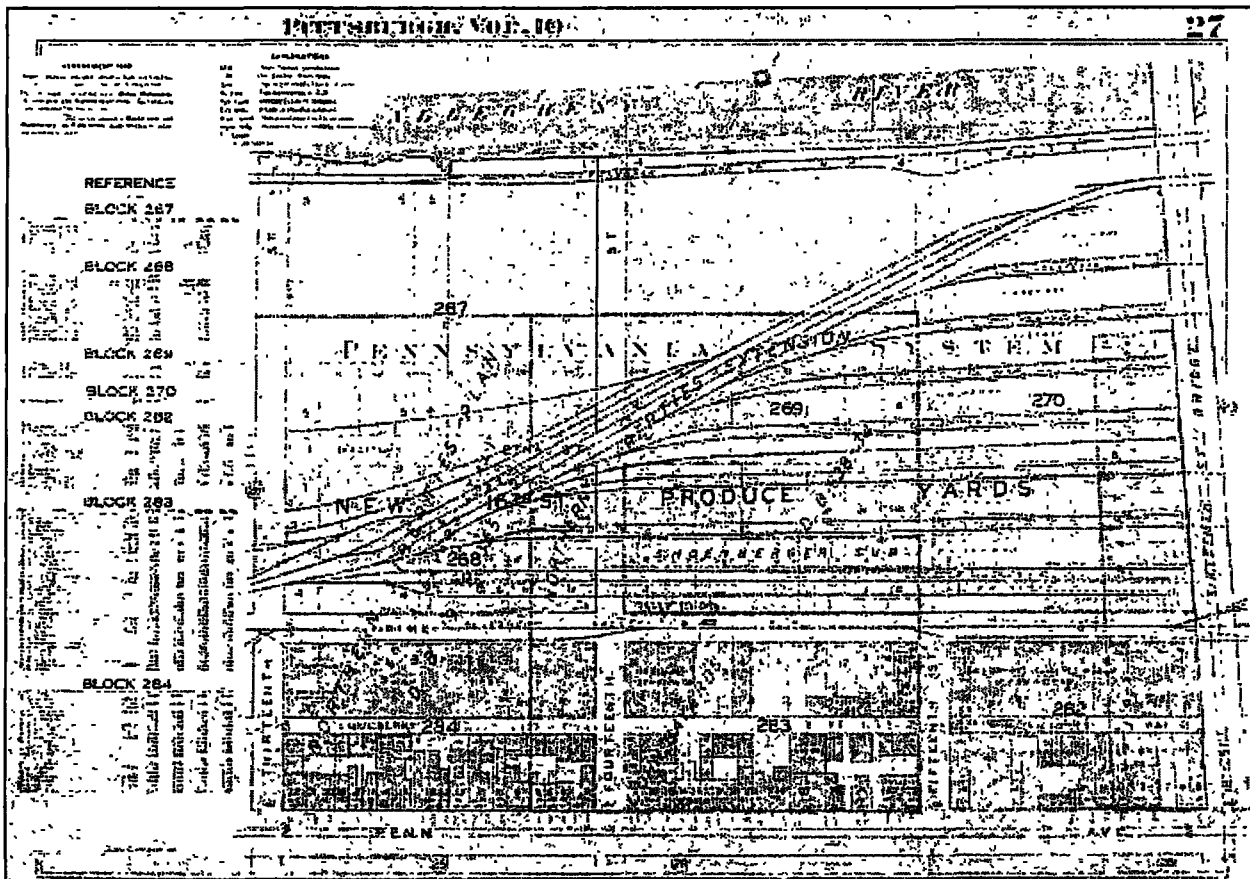
Return to the main [Index Map](#) for this volume.

Select Resolution Level
Select Image Size
Current Image Resolution:
Navigation View

- ☐ 100% Zoom
- ☐ 50% Zoom
- ☐ 25% Zoom
- ☐ 12% Zoom

- ☐ 600 x 400
- ☒ 800 x 600
- ☐ 1024 x 768

634 x 438 (width x height)
6 percent zoom


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[Images](#)
[Finding Aids](#)
[Census](#)
[Chronology](#)
[HSWP Catalog](#)

Map Index

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1929 Volume 10 - Central Pittsburgh: Wards 1-3: Plate 29

Return to the main [Index Map](#) for this volume.

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Select Image Size
Current Image Resolution:
Navigation View
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☐ 600 x 400

632 x 455 (width x height)

☐ 50% Zoom

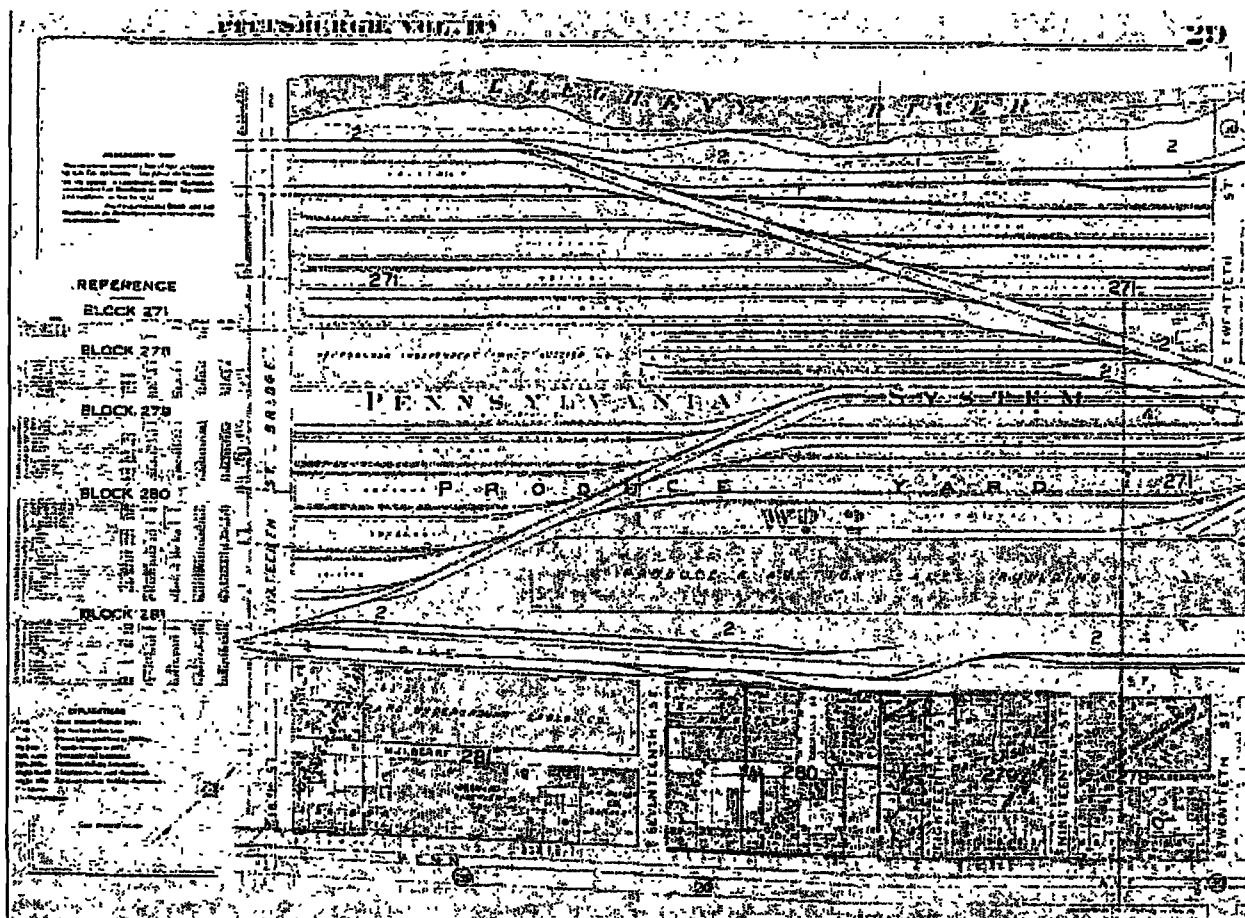
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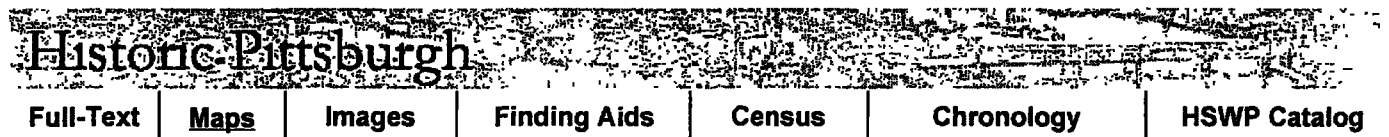
6 percent zoom

☐ 25% Zoom

☐ 1024 x 768

☐ 12% Zoom

[View Full Map](#)




Map Index

[Search](#) | [Browse](#) | [Map Help](#)

1929 Volume 10 - Central Pittsburgh: Wards 1-3: Plate 30

Return to the main [Index Map](#) for this volume.

Select Resolution Level

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- ☐ 50% Zoom
- ☐ 25% Zoom
- ☐ 12% Zoom

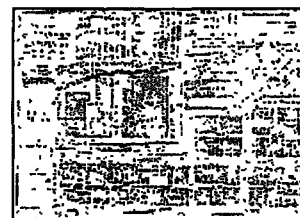
Select Image Size

- ☐ 600 x 400
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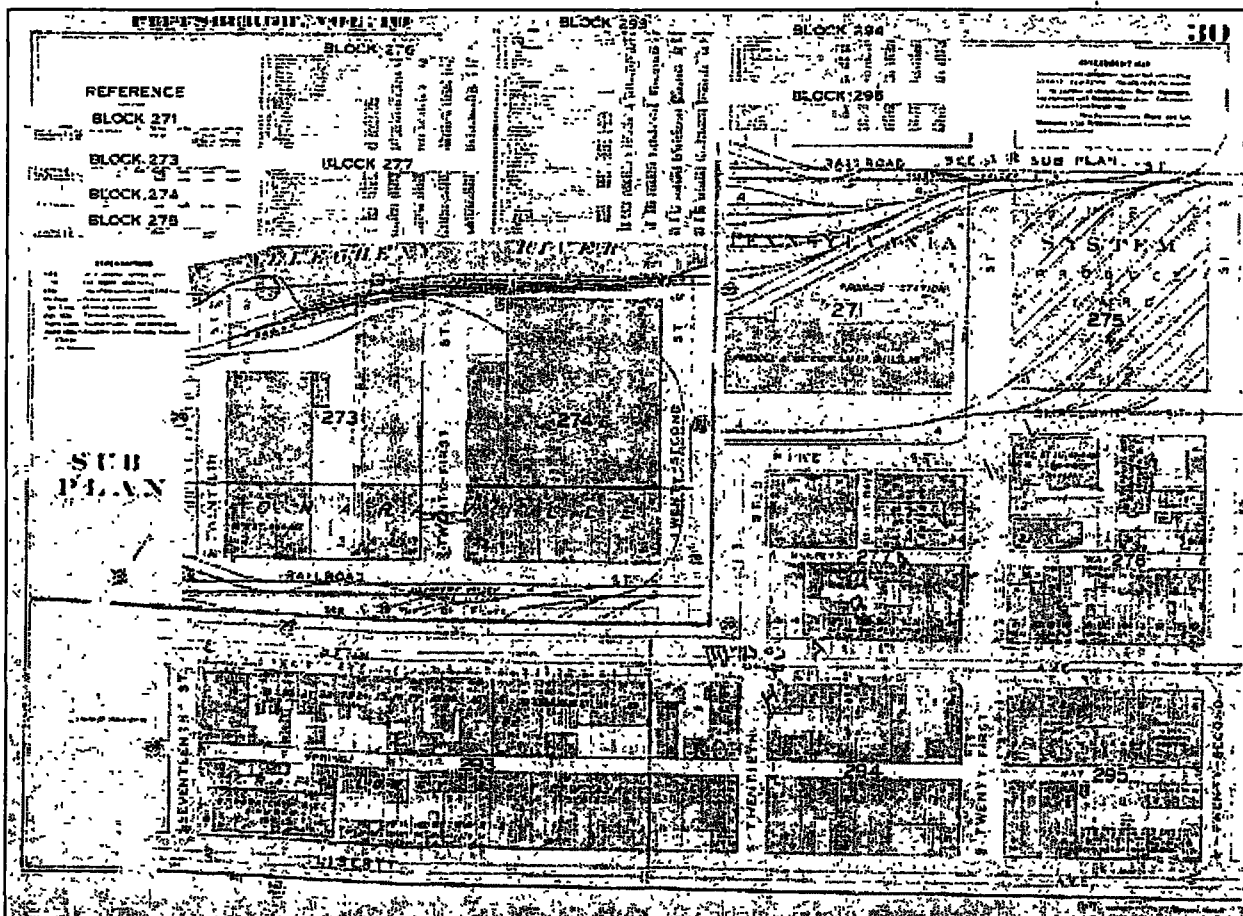
Current Image Resolution:

630 x 453 (width x height)
6 percent zoom

Navigation View



[View Full Map](#)



ALLEGHENY

RIVER

9TH WARD 10TH WA

43 RD ST. YARD

6TH WARD 9TH WARD

Crane & Truck
Service Co

MT Conway
&
Torley Co

Epping Carpenle Co

Atlantic & Pacific

Consolidated

Ice Co

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

Wagon Corp

H K Porter

Forge & Knife Co.

Heppinstall

Atlantic & Pacific

Consolidated

Ice Co

Wagon Corp

Wagon Corp

Wagon Corp

THE PENNSYLVANIA RAILROAD COMPANY

CENTRAL REGION

WESTERN PA DIV

CONEMAUGH
DIV.

PITTSBURGH, PA.

TRACK LAYOUT BETWEEN 11TH ST AND 51ST ST.

APR 16, 1948

SCALE 1"=500'

PITTSBURGH, PA.

ISLAND

HERRS

2ND WARD | 6TH WARD

HERRS

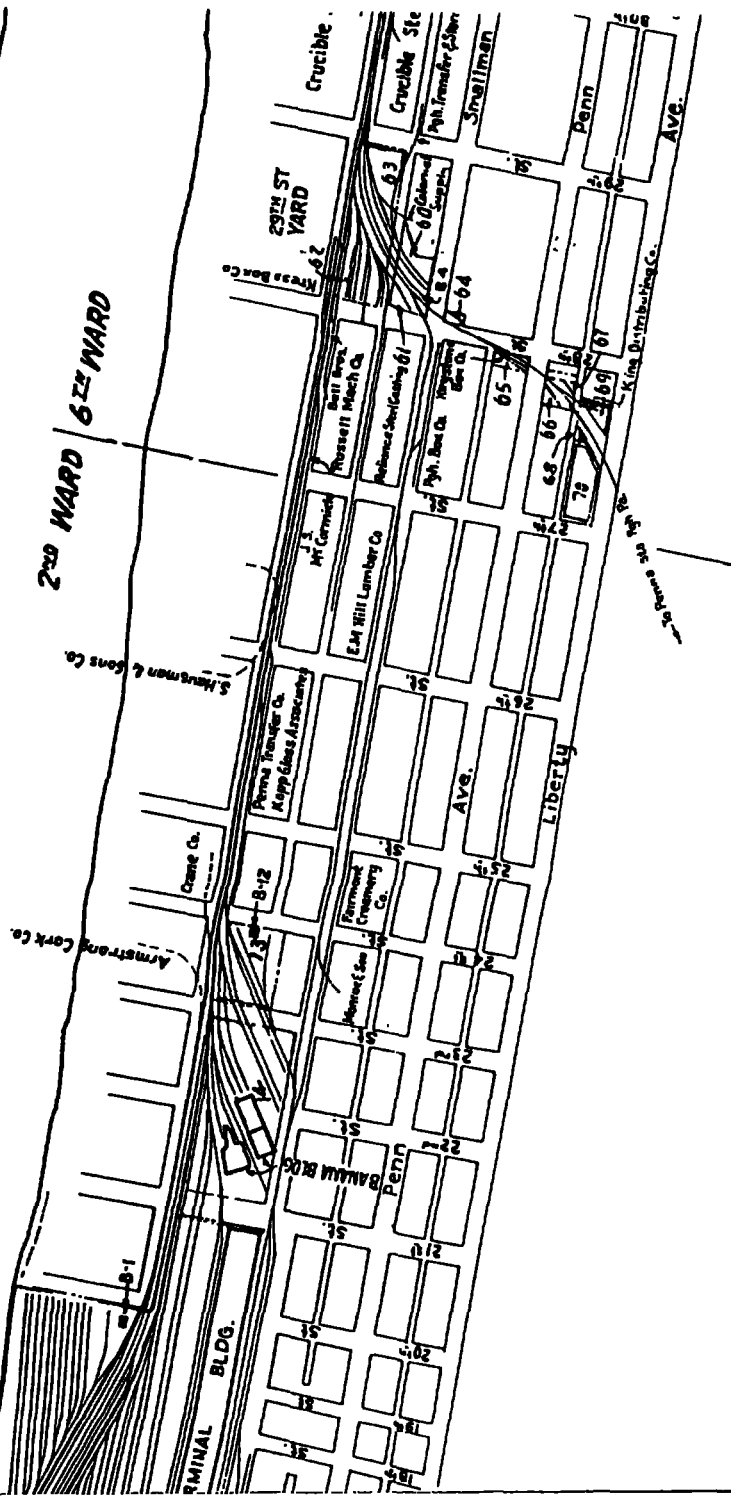
2ND WARD | 6TH WARD

29TH ST
YARD

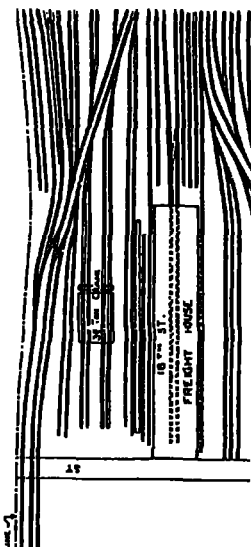
Hess Box Co

2ND WARD / 6TH WARD

This is a detailed street map of the Steel Yard area in Pittsburgh. The map shows a grid of streets including 29th St, 30th St, and 31st St. Key industrial buildings and companies are labeled, such as Standard Oil Co. of Penna., Duquesne Smelting Corp., and Crucible Steel Co. of America. The map also shows various streets like 32nd St, 33rd St, and 34th St, and companies like Smallman, Pe Lub Co., and Iron City Fuel Wks. The map is oriented with 29th St at the top and 34th St at the bottom.



ALLEGHENY



INTERLOCKING LAST REVISED 10-6-46	PLAN LAST CORRECTED 10-8-46
---	-----------------------------------

EBULT) 9-23-06
KING 1906
E LOCKING 1929
SS' Prior to 1924
1929
G ON HIGH SIGS 1906
IG ON DWARE SIGS 1929

CONRAIL

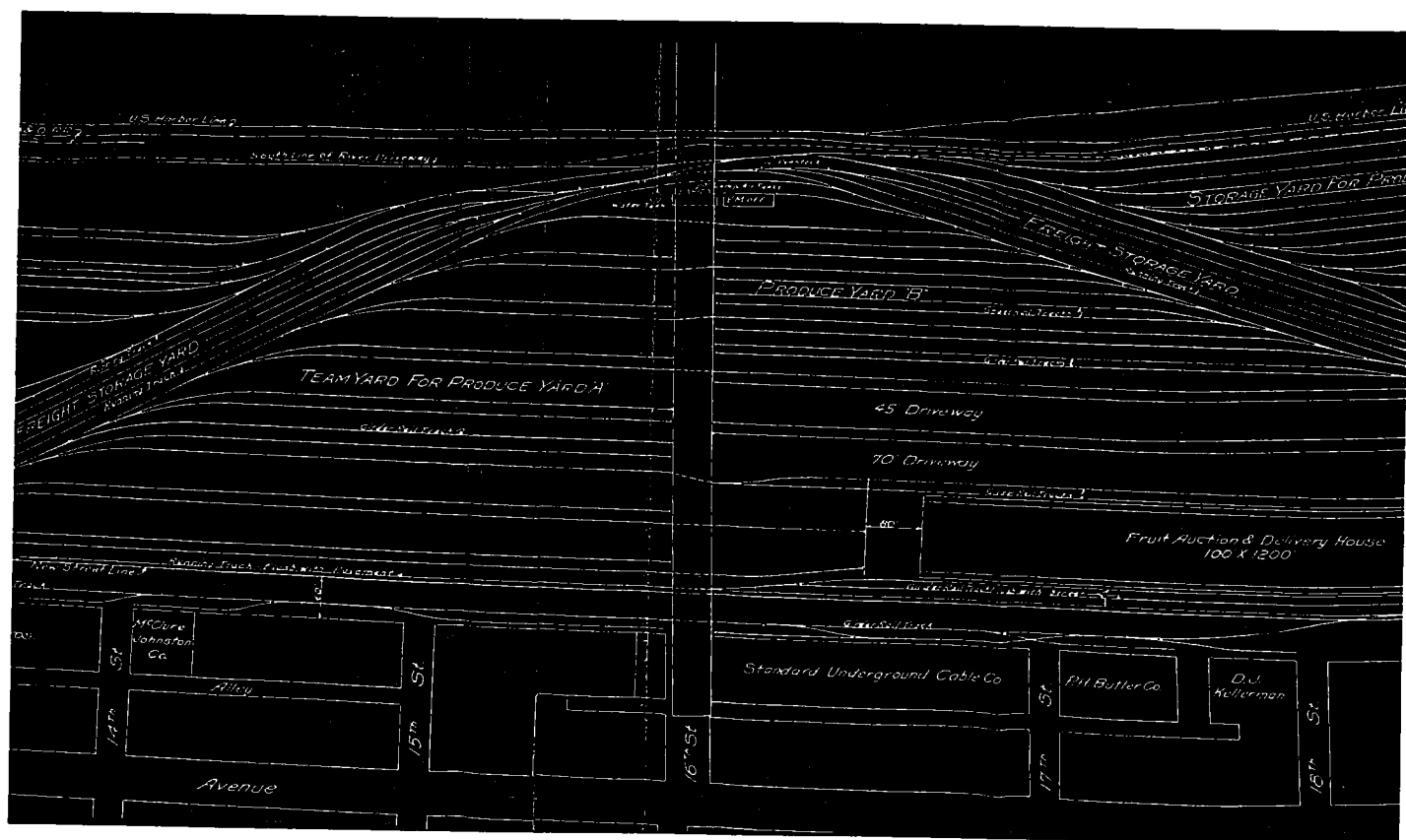
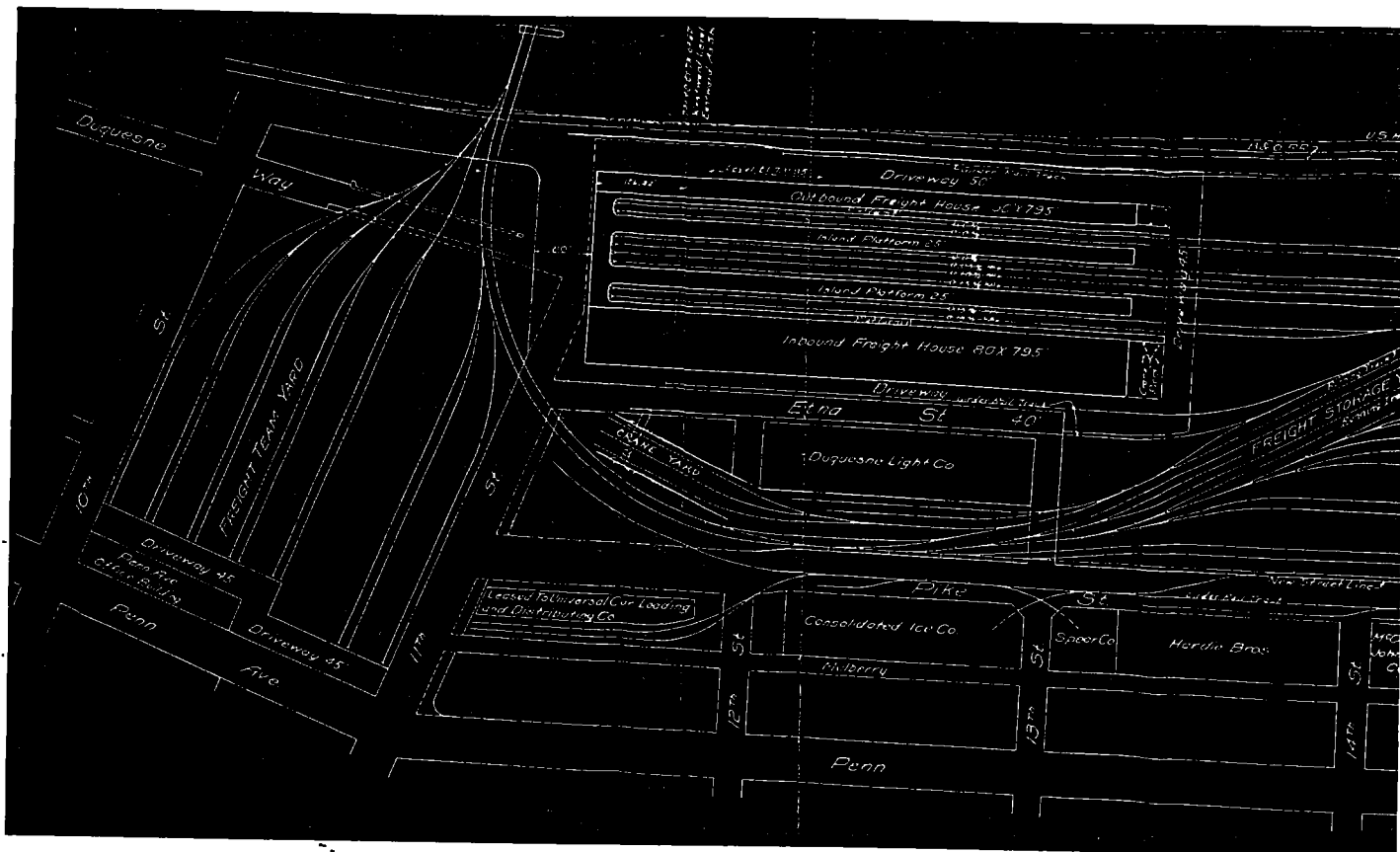


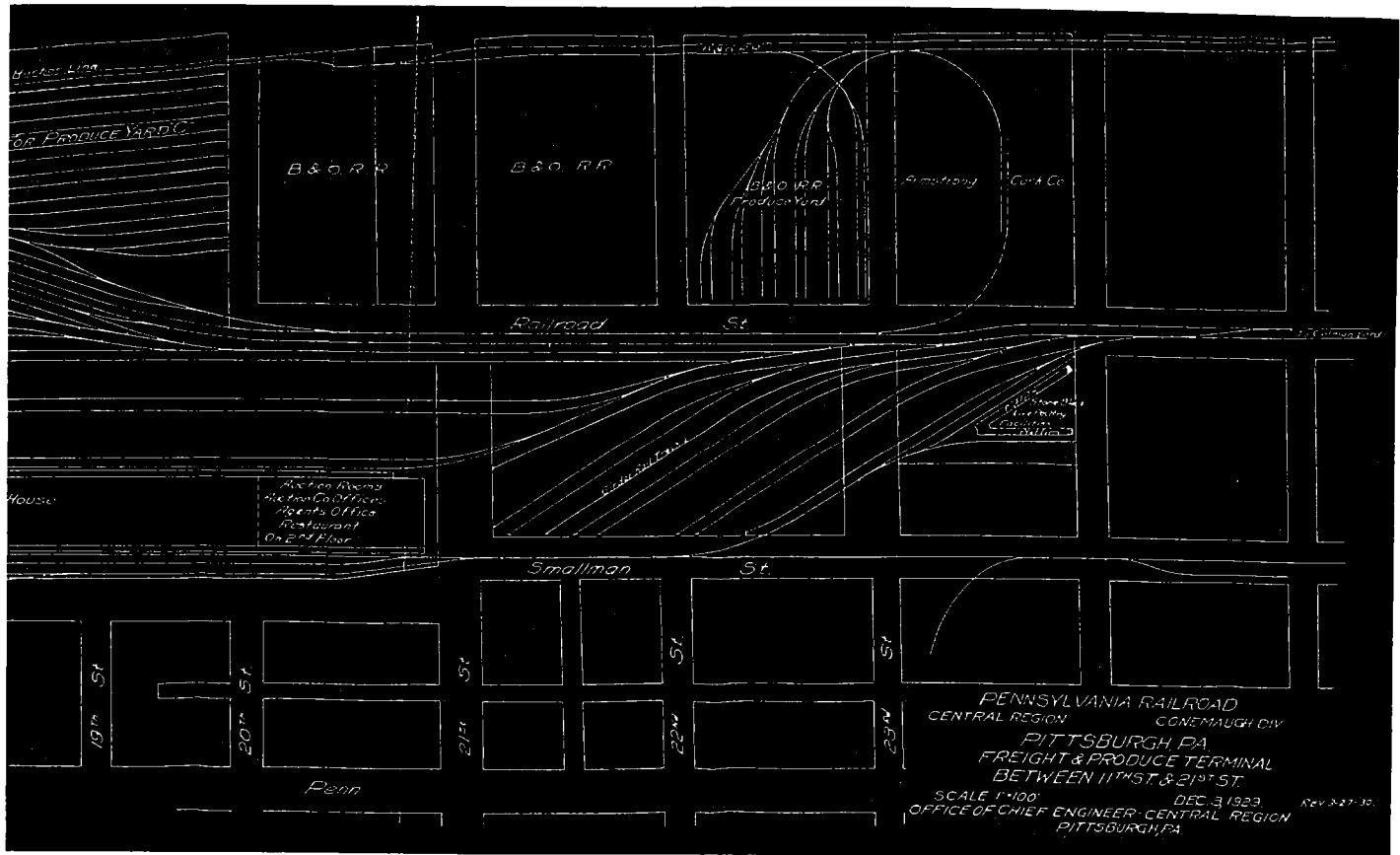
MAINTENANCE PROGRAM
AND
TRACK CHART
CENTRAL REGION
PITTSBURGH DIVISION

1984

GRADE

**MAP IS
AVAILABLE
AT THE
BOARD**





Hagley Museum & Library

IN early 1926 the PRR Board authorized \$5 million for the construction of a greatly enlarged freight and produce terminal stretching along the Allegheny River from 11th to 24th Streets. This project was part of the second Pittsburgh improvements program involving both passenger and freight terminals except that the passenger terminal as usual took longer to bring to fruition.

The freight terminal consisted of separate 800-ft. long inbound and outbound houses of brick and concrete, fronting on 11th Street, with eight house tracks, switching tracks and paved driveways. This facility, which was the largest LCL terminal in the U.S., was opened on 27 January 1930, replacing the Grant Street station, the old 11th and 16th Street houses and other

smaller ones.

The modern produce facilities extended from 13th to 24th Streets, replacing the old frame structure at 20th Street. They consisted of a combined fruit auction and general sales building of brick and concrete measuring 100x1200 ft. (with room for expansion by 200 ft.), house tracks of 112-car capacity, team tracks for bulk freight holding 449 cars and inspection tracks with a capacity for 317 cars. At this time PRR also constructed an auxiliary yard at 48th Street holding 586 cars.

This 1930 diagram shows the layout of the completed facility. We should point out that this sprawling complex dwarfed the adjacent B&O terminal, a measure of PRR dominance.

TIES AND SURFACING 1983
PAUL BELAID 1983 (131)

(BRILLIANT BR)^{RP.}

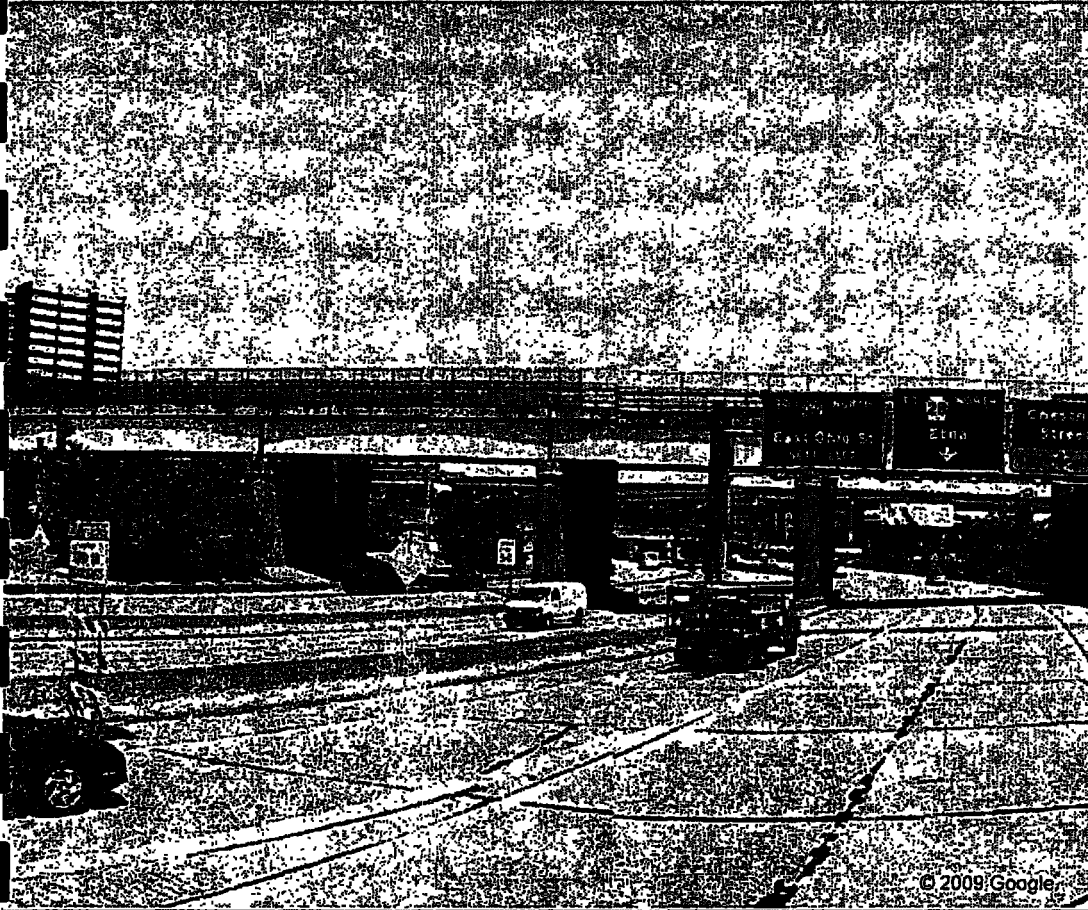
Aerial view of the upper deck of the Fort Wayne Bridge crossing the Allegheny River and Interstate 276 and State Route 28.



Google maps

Address PA-28

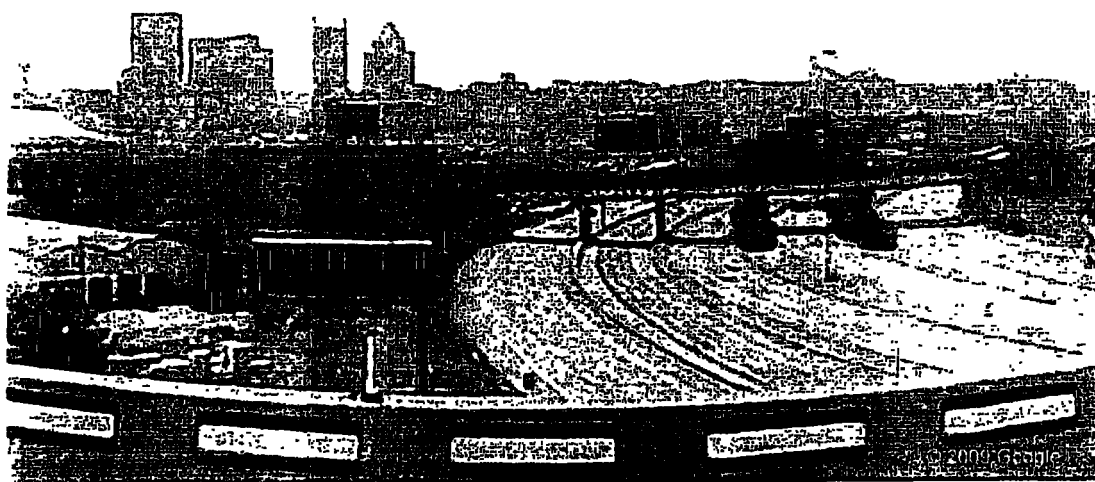
Address is approximate

Save trees. Go green!Download Google Maps on your
phone at google.com/gmm

View of the upper deck track from the Fort Wayne Bridge carrying the Norfolk Southern (formerly Conrail) main line over Interstate 279 and State Route 28 looking west from the Veterans Bridge on-ramp.

Google maps

Address

Save trees. Go green!Download Google Maps on your
phone at google.com/gmm

View of the upper deck track from the Fort Wayne Bridge carrying the Norfolk Southern (formerly Conrail) main line over Interstate 279 and State Route 28 looking east. Note the minimal vertical clearance.

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF JAMES E. STREETT

My name is James E. Streett and I am President of Carload Express, Inc. which is located in Oakmont, Pennsylvania. The Allegheny Valley Railroad Company is one of Carload Express, Inc.'s subsidiary operating corporations. This is my Reply Verified Statement which is submitted in response to the Surrebuttal Statement of the Buncher Corporation. I am authorized to make this statement on behalf of AVRR.

I started my railroad career in summer of 1969 with Penn Central Corporation and held various jobs with Penn Central and then with Conrail from 1969 to 1978. In October of 1978, I accepted a management position with the Union Railroad Company, a common carrier railroad subsidiary owned by U. S. Steel Corporation. I worked in several departments while at the Union Railroad and held numerous management positions ending my career on the Bessemer and Lake Erie Railroad Company as General Manager for both the Union and the Bessemer. In 2001, the Bessemer was acquired by Great Lakes Transportation, Inc. and I held the same position until 2004 when Canadian National purchased the Bessemer. Thereafter, I functioned as General Manager for Canadian National until retiring in 2006 to take the position as Vice President and General Manager of Carload Express. I became President of the company in February 2009.

My duties for Conrail from 1973 to 1978 started with a management training course after which I was promoted to trainmaster in 1975 in the Pittsburgh Division. My duties included becoming familiar with all aspects of the Division in order to serve as a Substitute Trainmaster so as to fill vacation and other vacancies throughout the Division. I was assigned on many occasions to fill the 43rd Street Yard Trainmaster position and I remember on many occasions rerailing cars in the Strip District at night. The 43rd Street Yard was served via a local crew from Conway Yard that would use the lower level of the Ft. Wayne Bridge and traverse through the Strip District via the Smallman Street track to the 28th Street connection with the Railroad Street track and then into 43rd Street Yard to set off inbound and pick up outbound freight. A local switcher would then classify cars at the 43rd Street Yard and make up a train for the third shift local that would serve the Produce Yard and other customers via Railroad Street. At this time, the Railroad Street track did not extend any further than 16th Street and accordingly, the only way traffic originated at western origins could reach the Strip District was by means of the Smallman Street track. During this period, we referred to the track facilities between 21st and 16th Streets generally as the Produce Yard or the 16th Street Yard interchangeably.

In my preparation of this Verified Statement, I have reviewed the prior Verified Statements of Russell Peterson submitted in this proceeding and I can confirm that he has accurately described the operations of Penn Central and Conrail in the Strip District.

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)

)

COUNTY OF ALLEGHENY)

I, James E. Streett, President of Carload Express, Inc., the parent corporation of Allegheny Valley Railroad Company, swear or affirm and verify that the statements made in the foregoing Verified Statement are true and accurate to the best of my knowledge, information and belief.

July 7, 2009
DATE

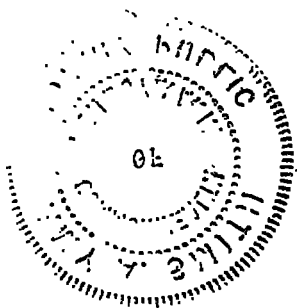
James E. Streett
SIGNATURE

Subscribed and sworn to before me this 7th day of July 2009.

Amy A. Smith
NOTARY PUBLIC



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Amy A. Smith, Notary Public
Oakmont Boro, Allegheny County
My Commission Expires April 15, 2011
Member, Pennsylvania Association of Notaries



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HEREIN IS UNCLASSIFIED
DATE 01-01-01 BY 60322
EXEMPT FROM GDS AUTOMATIC
DECLASSIFICATION SCHEDULE

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

LEGAL ARGUMENT IN SUPPORT OF ALLEGHENY VALLEY RAILROAD
COMPANY'S REPLY TO THE BUNCHER COMPANY MOTION FOR LEAVE TO
FILE A RESPONSE TO ALLEGHENY VALLEY RAILROAD COMPANY'S
REBUTTAL

1. The Conrail abandonment application in AB-167(Sub No. 588N)

describes and depicts the exact length and location of the Smallman Street rail line to be abandoned and its relation to the other lines in the area.

Buncher's motion to file surrebuttal is merely a transparent effort to avoid a self-inflicted evidentiary admission against interest. In its Reply of June 2, 2009, Buncher at Exhibit F submitted a copy of Conrail's abandonment application in ICC Docket No. AB-167 (Sub No. 558N) for the lower deck track on the Ft. Wayne Bridge over the Allegheny River and its connection to the Valley Industrial Track (formerly the Allegheny Secondary Track) from M.P. 0.0 at 11th Street to M.P. 0.66 at the north side of 21st Street. The application Exhibit B depicts that portion of the Valley Industrial Track (formerly Allegheny Secondary Track) which as of 1984 extended up Smallman Street through 21st Street to a connection at 29th Street with the mainline of the former Allegheny Branch (Railroad Street line) which extended along and adjacent to Railroad Street from 31st Street to 21st Street and from which a siding extended across 21st Street to serve the Pittsburgh Produce Terminal Warehouse between 21st Street and 16th Street until 1993. (See AVRR Petition for Declaratory Order Exhibit H).

The Conrail abandonment application also depicts the B&O River Branch and that portion of the Valley Industrial Track consisting of the main line of the former Allegheny Branch extending along Railroad Street to 21st Street, west of the Smallman Street line. It also depicts the property formerly occupied by Track 8 between 16th and 21st Streets to which Conrail retained a permanent rail easement in its 1983 deed to Buncher. However, Exhibit C, Line 11C of the 1984 application does not identify or value the 1983 retained permanent rail easement as part of the railroad properties sought to be abandoned by Conrail¹. Finally, in 1984, the only existing railroad track comprising a portion of the Valley Industrial Track from M.P. 0.0 to M.P. 0.66 was the track running up Smallman Street on the south side of the Pittsburgh Produce Terminal Warehouse². The disputed section of railroad right of way which is the subject of AVRR's Petition for Declaratory Order extends only from 16th Street (M.P. 0.3) to 21st Street (M.P. 0.6) along the former mainline of the Allegheny Valley Railroad extending from Railroad Street. Thus, the track along Smallman Street and the track extending along Railroad Street including the retained permanent rail easement are two different and distinct pieces of railroad property separated by a full city block and accessed by different lines of the Valley Industrial Track.

As the Board is well aware, in both acquisition and abandonment applications railroad trackage is described with precision and depicted on a map identifying the specific line or lines to which the application pertains and their relationship to other rail lines in the immediate vicinity. Buncher's contention that AB-167(Sub No. 588N)

¹ Exhibit C, Line 11C of the 1984 abandonment application does not include any land valuation for the Smallman Street line because Conrail sold the Produce Terminal Warehouse and its property adjacent to Smallman Street to the Pittsburgh Urban Redevelopment Authority in 1983. The remainder of the line occupied the public right of way for Smallman Street.

² The Pittsburgh Produce Terminal was also referred to as the Produce Terminal Building or the Pennsylvania Railroad Fruit Auction and Sales Building.

establishes Conrail's intent to abandon everything it owned or operated between M.P. 0.3 at 16th Street and M.P. 0.6 at 21st Street simply contradicts the information contained in the Conrail abandonment application and reveals Buncher's unfamiliarity with ICC/STB abandonment requirements as well as the flawed and meritless basis for its assertions. See 49 C.F.R. §1152.22(a)(4).

As Mr. Peterson explained in AVRR's Rebuttal Statement of June 11, 2009 and as he further clarifies in this Reply, Conrail's 1984 abandonment application only identified its trackage along Smallman Street between 11th and 21st Streets and not all of its trackage or railroad rights of way property between 16th and 21st Streets. Indeed, Conrail continued to serve the Pittsburgh Produce Terminal Warehouse between 16th and 21st Streets via its Railroad Street line and Track 703 until 1993 (See AVRR Petition for Declaratory Order, Exhibit H). Accordingly, Conrail's 1984 abandonment application in AB-167 (Sub No. 588N) can only be reasonably construed as seeking abandonment authority for the Smallman Street line between 11th Street and 21st Street.

There were compelling reasons for Conrail's 1984 abandonment that had nothing to do with the 1983 Buncher permanent rail easement transaction. In 1983, Conrail sold the Pittsburgh Produce Terminal Warehouse to the Urban Redevelopment Authority and removal of the Smallman Street track was necessary to rehab and provide unimpeded access to the truck loading docks on the Smallman Street side of that warehouse. Moreover, abandonment and removal of the portions of lower deck of the Ft. Wayne Bridge north of the Allegheny River was imperative to provide adequate clearances for the construction of Interstate 279 and the State Route 28 connection on the north bank of the Allegheny River between the Ft. Duquesne Bridge and Interstate 79. As indicated by

the photographs at Exhibit FF, the lower deck of the Ft. Wayne Bridge on the north side of the river had to be removed to provide adequate vertical clearance for Interstate 279 and Route 28 to pass under the Pittsburgh Division Main Line.

Buncher also tries to impugn the credibility of Mr. Peterson's testimony claiming it is "antidotal" and "uncorroborated". However, Mr. Peterson has an extensive professional career in the railroad industry which spans 39 years in various management and executive positions. As the Board knows from Mr. Peterson's prior regulatory filings, he has extensive personal and professional experience in acquiring and operating various railroad properties throughout the United States and is familiar with the regulatory and operational requirements for acquisition and abandonment of railroad properties. His explanations and testimony concerning the history of rail operations over the various track configurations in the Strip District are fully corroborated and credible.

2. Neither the documents relied on by Buncher nor the "totality of the facts" establish that Conrail abandoned all of its trackage and property interests comprising the Valley Industrial Track between 16th and 21st Streets in the Pittsburgh Strip District.

Buncher's Surrebuttal statement tries to create confusion where none exists regarding the various designations applied historically to the Valley Industrial Track. AVRR's testimony extensively describes the evolution of the main line of the former Allegheny Valley Railroad Company from its designation by the Pennsylvania Railroad and Penn Central as the Allegheny Branch of the Conemaugh Division to Conrail's redesignation of the line as the Valley Industrial Track. These redesignations were not mere happenstance. They reflect changes in traffic, service and track configurations over

time and were published in employee timetables for the use of railroad crews which worked on these lines.

Contrary to Buncher's assertions, and as the Board is well aware, line designations do not necessarily pertain to a single track, but rather identify the configuration of all tracks over which a railroad serves shipper locations along a particular rail right of way.. Track configurations along a line are the result of construction and operational changes as well as railroad mergers or acquisitions and the subsequent modifications made by the merged company to integrate the tracks of previously separate companies into a coordinated system of track.

When a railroad abandons a section of its track no longer needed for common carrier rail service, the custom and practice in the industry is to describe the track as a portion of the designated line name, such as the Valley Industrial Track. However, in a case where a line name applies to multiple track configurations, additional specificity is required to identify exactly what trackage is being removed from the railroad's statutory common carrier obligation so that shippers served by that track can participate in the abandonment proceedings to protect their interests, including the right to purchase the track. Thus, an abandoning railroad identifies the specific portion of each track being abandoned between two milepost designations along that track or uses other physical geographic features such as intersecting streets or engineering stations which identify specific geographic locations on the track.

Given these industry procedures which are incorporated in the Board's abandonment regulations at 49 C.F.R. §1152.22(a)(4), the generic references to line

designations contained in the 1975/1976 Preliminary and Final System Plans³ and the 1976 Penn Central deeds to Conrail are simply irrelevant for purposes of identifying the track which Conrail intended to abandon at AB-167 (Sub. No. 558N) except for general historical context. Thus the documents cited by Buncher in its Motion and supporting Verified Statement fail to establish that Conrail abandoned any rail facilities in the Strip other than the line extending from M.P. 0.0 to M.P. 0.66 along Smallman Street.

3. The Valley Industrial Track, f/k/a Allegheny Secondary, f/k/a Allegheny Branch consisted of various track configurations from 1856 to 1984 as the Allegheny Valley Railroad Company, the Pennsylvania Railroad Company, Penn Central Corporation and Conrail adjusted rail service over those tracks to serve shippers located in the Pittsburgh Strip District.

Mr. Peterson's Reply Verified Statement identifies and describes the development and integration of the main line of the former Allegheny Valley Railroad Company which from 1856 to 1900 approached the Pittsburgh Strip District along Railroad Street and then crossed over to Pike Street (now Smallman Street) at 16th Street and extended along Smallman Street to terminate at the Allegheny Valley Railroad terminal located at the intersection of 11th Street and Pike Street (now Smallman Street) at M.P. 0.0. This was the configuration of the Allegheny Valley Railroad Company rail line into the Pittsburgh Strip District until approximately 1900 when the Pennsylvania Railroad Company acquired the Allegheny Valley Railroad Company line by means of a long-term lease and redesignated the line as the Allegheny Branch of its Conemaugh Division. In 1902 the Pennsylvania Railroad connected the Branch at 11th Street to its Fort Wayne Division

³ Indeed, the Final System Plan entry for line code 650a at Page 424 of Volume II improperly identifies the milepost number at 11th Street as M.P. 4.6 instead of M.P. 0.0. Milepost 4.6 was located at 57th Street on the former Allegheny Branch, now the Valley Industrial Track.

main line via the lower level of the new Ft. Wayne Bridge over the Allegheny River. At the same time, the PRR extended the former AVRR main line in Pike Street (now Smallman Street) between 11th and 16th Streets up to 28th Street to avoid the growing congestion in the Pittsburgh Produce Yard which had grown up around the former Allegheny Valley Railroad Company main line between 16th Street and 21st Street. Thus, the Allegheny Branch was comprised of two primary service routes through the Strip District, jointly using the track on Smallman Street from 11th to 16th Street where the former Allegheny Valley Railroad Company main line crossed over to Railroad Street through the Produce Yard. The second primary route was the new PRR line in Smallman Street which continued from 16th Street up Smallman Street to connect with the former Allegheny Valley Railroad main line at 29th Street. These two lines are depicted in the maps from 1906 to 1976 contained in Exhibits AA, BB, CC, and DD of Mr. Peterson's verified statement.

The former AVRR main line through the Produce Yard between 16th and 21st Streets changed from time to time as the yard expanded and was reconfigured but it continued to connect with the Smallman Street track at 11th Street and the Ft. Wayne Bridge until the trackage south of 16th Street was abandoned and sold by the Penn Central trustees in the 1970s. Thereafter, traffic from western origins destined for the Produce Yard crossed the Allegheny River on the lower level of the Ft. Wayne Bridge and proceeded up Smallman Street to 29th Street and then to the 43rd Street Yard where it was reclassified and hauled down the Railroad Street line of the Allegheny Branch into the Produce Yard for delivery and unloading. As described by Mr. Streett, this was the operational route used by Penn Central and Conrail until the 1984 abandonment of the

Smallman Street track between M.P. 0.0 and M.P. 0.66 and the lower deck of the Ft. Wayne Bridge in AB167 (Sub No. 588N). Mr. Streett's testimony is based on his personal experience managing Conrail train movements in the Strip District during the period immediately prior to the 1984 Conrail abandonment as well as his personal knowledge regarding the delivery of food stuffs to the Pittsburgh Produce Terminal Warehouse.

After the 1984 Smallman Street track abandonment, Mr. Peterson describes how Produce Yard shipments were handled by Conrail (and currently by AVRR) over the upper level of the Ft. Wayne Bridge via the Pittsburgh Division main line and then over the reestablished Brilliant Branch connection to the former Allegheny Branch main line via the Railroad Street track to the Pittsburgh Produce Terminal Warehouse. As a certified locomotive engineer for AVRR, Mr. Peterson has personally operated AVRR locomotives over this route.

The testimony of Mr. Peterson and Mr. Streett is not just an esoteric excursion into the historic details of Strip District rail operations. This testimony conclusively establishes that Conrail did not intend to abandon the permanent rail easement retained in 1983 when it abandoned its Smallman Street line from 11th Street to 21st Street in 1984. Rather, this testimony proves that Conrail continued to operate via its renewed Brilliant Branch connection to the former Allegheny Branch Railroad Street line to provide rail service to the Pittsburgh Produce Terminal between 21st Street and 16th Street until at least 1993, many years after the 1984 Smallman Street track abandonment proceeding. These facts refute Buncher's contention that in 1984 Conrail intended to abandon all of its railroad property interests and rail facilities including its retained permanent rail

easement between 21st and 16th Streets served by its Railroad Street line in AB-167 (Sub No. 588N).

Moreover, Mr. Jackovic's Surrebuttal testimony in this connection is telling. At Page 1, he notes that the removal of Conrail trackage from the retained rail easement was accomplished "without objection by Conrail." Thus, Mr. Jackovic now concedes that it was not Conrail which removed Track 8 from permanent rail easement parcel. The Board must reach its own conclusions as to whether or not this testimony indicates that Buncher's witness has been less than candid with the Board as to the identity of the party that removed or covered the track extending from Railroad Street between 21st and 16th Streets over the permanent rail easement retained by Conrail.

The testimony of Mr. Peterson and Mr. Streett together with the extensive compendium of railroad maps depicting the lines of the former Allegheny Valley Railroad Company, the Pennsylvania Railroad Company, and Conrail, which served the Strip District between 1856 to 1984 conclusively demonstrate and corroborate the fact that there were two separate and distinct rail lines comprising the Valley Industrial Track over which Conrail and its predecessor railroads provided rail service to and from the Strip District and that the only track abandoned by Conrail in 1984 was its Smallman Street line between 11th Street and 21st Street leaving the retained permanent rail easement subject to STB jurisdiction.

4. The legal necessity for Conrail to file a Notice of Consummation in AB-167(Sub No. 588N) derives from the statutory authority of the ICC to establish and oversee expedited abandonment procedures to implement the provisions of the Northeast Rail Service Act.

In the context of the legal dispute between the parties in this proceeding, the issue of Conrail's failure to file a consummation notice in accordance with the ICC's abandonment order in AB-167(Sub No. 588N) pertains only if the Board were to conclude Conrail sought abandonment authorization for all of its track and rail facilities between 21st and 16th Street in that abandonment docket. The Conrail abandonment application documents submitted by Buncher are simply not susceptible to such a construction. AVRR notes that under the Northeast Rail Service Act the ICC had no authority to reject, dismiss, deny, delay or condition the Conrail abandonment applications under NERSA. That, however, does not mean that the ICC could not require Conrail to file a Notice of Consummation because under NERSA, Conrail still only obtained expedited ICC permissive abandonment authority. As the ICC made clear in Conrail Abandonments Under NERSA, 365 ICC 472, 1981 WL 22704 (1981), Conrail "may abandon or dispose of the line as it chooses". (Emphasis added) Thus, the failure of Conrail to file the abandonment consummation notice directed by the ICC in AB-167 (Sub No. 588N) leaves open the question of whether or not Conrail chose to effectuate the abandonment authority it obtained in that docket with respect to the retained rail easement between 16th and 21st Street. The ambiguity created by Conrail's failure to file the Notice of Consummation is compounded by the evidence which demonstrates that Conrail continued to use the Railroad Street line and tracks connected thereto to serve the Pittsburgh Produce Terminal between 16th and 21st Street until at least 1993 as indicated by the 1993 ZTS map attached to AVRR's Petition for Declaratory Order at Exhibit H⁴.

⁴ Contrary to Buncher's assertions, even in 1984, the prior removal of the Produce Yard rail facilities on both sides of Track 8 fundamentally changed Conrail's current and potential use of that track and the easement retained in 1983. The track and right of way between 21st and 16th Streets was no longer to be used for yard and switching purposes, but were preserved as an extension of the former Allegheny Branch

Accordingly, the STB always has statutory jurisdiction to oversee and administer its railroad abandonment regulations to determine its jurisdiction over a common carrier rail line which may depend on whether or not a railroad effectuated a purported abandonment authorization.

CONCLUSION

Facts are stubborn things; and whatever may be Buncher's wishes, inclinations or desires, they do not alter the state of facts and evidence in this proceeding. As demonstrated in AVRR's Reply to Buncher's Motion for Surrebuttal, there is no reason for the Board to grant Buncher's motion which is an impermissible reply to a reply.


Moreover, a careful document by document and map by map review by the Board of the evidence submitted by AVRR will confirm that Conrail's abandonment application in AB-167 (Sub No 588N) clearly identifies only that portion of the Valley Industrial Track (formally the Allegheny Secondary Track) along Smallman Street comprising 0.66 of a mile (3,485 feet) between M.P. 0.0 at 11th Street and M.P. 0.66 at the north side of 21st Street. As confirmed by the evidence of record submitted by both parties, the only portion of the Valley Industrial Track owned and operated by Conrail in the Strip District in 1984 which fits this precise description and is identified in Conrail's abandonment application exhibits is the track that extended up Smallman Street from 11th Street to 21st Street along the southeast side of the Pittsburgh Produce Terminal Warehouse, the removal of which was needed for the rehabilitation and marketing of that warehouse by the Pittsburgh Urban Redevelopment Authority. Thus, that 1984 abandonment proceeding in AB-167 (Sub No. 588N) had nothing to do with the Conrail/Buncher

main line track between 21st and 16th Streets to provide for delivery and origination of interstate line haul traffic. See Verified Statement of James E. Streett.

conveyance in 1983 from which Conrail retained a permanent rail easement for the Railroad Street track between 16th and 21st Street on the northwest side of the Pittsburgh Produce Terminal Warehouse, a full city block away from Smallman Street. That portion of the Valley Industrial Track was never abandoned by Conrail or AVRR and remains fully subject to the Board's jurisdiction to this day.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of July, 2009 served a copy of Allegheny Valley Railroad Company's Reply to the Buncher Company's Motion for Leave to File a Response to Allegheny Valley Railroad Company's Rebuttal upon the following by first class United States Mail, postage prepaid:

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